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# REPORT

OF THE

# SIXTEENTH ANNUAL MEETING

OF THE

# WEST VIRGINIA

# STATE BAR ASSOCIATION,

HELD AT

PARKERSBURG, WEST VIRGINIA,

FEBRUARY 4th AND 5th, 1901.

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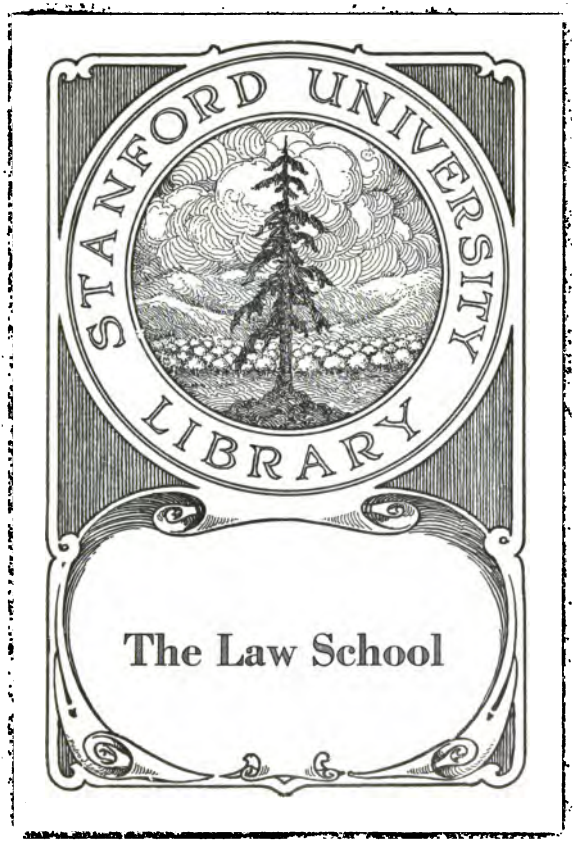
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## FOREWORD

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**REPORT**

**of the**

**SIXTEENTH ANNUAL MEETING**

**of the**

**WEST VIRGINIA STATE BAR ASSOCIATION**

**Held at**

**Parkersburg, West Virginia**

**February 4th and 5th, 1901**

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# OFFICERS AND STANDING COMMITTEES·

## 1901.

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## OFFICERS.

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**PRESIDENT.**

**JOHN BASSEL,**

**Clarksburg.**

**VICE-PRESIDENTS.**

**S. BRUCE HALL, New Martinsville (First District).**

**U. S. G. PITZER, Martinsburg (Second District).**

**C. C. HIGGINBOTHAM, Buckhannon (Third District).**

**LEVIN SMITH, Parkersburg (Fourth District).**

**SECRETARY.**

**JOHN W. DAVIS,**

**Clarksburg.**

**TREASURER.**

**W. N. MILLER,**

**Parkersburg.**

**EXECUTIVE COUNCIL.**

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**D. C. WESTENHAVER, Martinsburg.**

**B. M. AMBLER, Parkersburg.**

**HENRY M. RUSSELL, Wheeling.**

**C. D. MERRICK, Parkersburg.**

# STANDING COMMITTEES.

## COMMITTEE ON ADMISSIONS.

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B. M. AMBLER, Parkersburg.
FORREST W. BROWN, Charles Town.
H. P. CAMDEN, Parkersburg.
JOHN J. CONIFF, Wheling.
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## COMMITTEE ON GRIEVANCES.

W. MOLLOHAN, Chairman, Charleston.
WM. G. PETERKIN, Parkersburg.
MELVILLE D. POST, Grafton.
O. S. MARSHALL, New Cumberland.
A. M. POUNDSTONE, Buckhannon.
J. HOP WOODS, Philippi.

## COMMITTEE ON LEGAL EDUCATION.

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J. C. MCWHORTER, Buckhannon.
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## COMMITTEE ON LEGAL BIOGRAPHY.

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CHARLES E. HOGG, Pt. Pleasant.
ROMEO H. FREER, Charleston.
W. R. D. DENT, Grafton.
P. J. CROGAN, Kingwood.

# ROLL OF MEMBERS

## OF THE WEST VIRGINIA STATE BAR ASSOCIATION, 1900-1.

Alderson, Chas. M.....Charleston.
Alderson, John D. .....Summersville.
Allen, W. S.....St. Marys.
Allen, G. R. C.....Wheeling.
Allison, B. S.....Wheeling.
Ambler, B. M.....Parkersburg.
Ambler, M. B.....Parkersburg.
Archer, V. B.....Parkersburg.
Arnett, U. N.....Fairmont.
Ashby, W. L.....Charleston.
Atkinson, Geo. W.....Charleston.
Ayers, B. F.....Harrisville.
Baker, Geo. C.....Morgantown.
Baker, Melvin D.....Cleveland, O.
Bambrick, G. L.....New Cumberland.
Barron, J. F.....St. Marys.
Barrett Thos. F.....Parkersburg.
Bassell, John.....Clarksburg.
Bayer, Harry W.....Berkeley Springs.
Beard, Wm.....Parkersburg.
Bennett, J. B.....Weston.
Bennett, W. G.....Weston.
Blackmarr, F. L.....Sistersville.
Blair, J. V.....West Union.
Blizzard, Reese.....Parkersburg.
Bower, Basil T.....New Martinsville.
Boyd, Geo. E.....Wheeling.
Brannon, W. W.....Weston.

Bratton, W. A.....Mannington.
Brown, W. G. Jr.....Kingwood.
Brown, J. F.....Charleston.
Brown, Thos. L.....Charleston.
Brown, C. L.....Ravenswood.
Brown, Forrest W.....Charles Town.
Brown, T. A.....Elizabeth, Wirt Co.
Brooke, St. George T.....Morgantown.
Bullock, T. O.....Parkersburg.
Burdette, S. C.....Parkersburg.
Burlew, Abram.....Charleston.
Butcher, B. L.....Fairmont.
Caldwell, Alfred.....Wheeling.
Caldwell, Geo. B.....Wheeling.
Camden, H. P.....Parkersburg.
Campbell, Jno. A.....New Cumberland.
Campbell, A. N.....Union
Campbell, Oscar A.....Morgantown.
Carmichael, Randolph T.....Charleston.
Chambers, O. J.....Spencer.
Chilton, W. E.....Charleston.
Clarke, A. J.....Wheeling.
Clark, R. L.....Union.
Clark, F. W.....New Martinsville.
Clayton, W. C.....Keyser.
Comley, Wm. G.....Parsons.
Coniff, Jno. J.....Wheeling.
Copper, Jno. T.....Parkersburg.
Cornwall, W. B.....Romney.
Cowden, W. J.....Wheeling.
Cox, Frank.....Morgantown.
Crogan, P. J.....Kingwood.
Cutright, W. B.....Buckhannon.
Dailey, R. W.....Romney.
Dailey, Benj.....Moorefield.
Dailey, C. W.....Keyser.
Davis, John J.....Clarksburg.
Davis, John W.....Clarksburg.
Dawson, Wm. M. O.....Charleston.

Dayton, A. G.....Philippi.
Dent, W. R. D.....Grafton.
Dent, M. H.....Grafton.
Dice, Chas. S.....Lewisburg.
Dillon, C. W.....Fayetteville.
Doolittle, Edward S. .....Huntington.
Donehoo, Jno. R.....Fairview.
Dorr, C. P.....Addison.
Dovener, B. B.....Wheeling.
Edminston, Andrew.....Weston.
Emmert, H. H.....Martinsburg.
Enslow, F. B.....Huntington.
Ewing, Jas. W.....Wheeling.
Ewing, J. Alex.....Moundsville.
Fast, R. E.....Morgantown.
Faulkner, C. J.....Martinsburg.
Faulkner, E. Boyd.....Martinsburg.
Fleming, G. M.....Buckhannon.
Flick, C. P.....Wheeling.
Flick, W. H. H.....Martinsburg.
Flournoy, S. L.....Charleston.
Fortney, Neil J.....Kingwood.
Frazier, Jas. C.....Morgantown.
Freer, Romeo H.....Harrisville.
Gaines, J. H. .....Charleston.
Garvin, T. M.....Wheeling.
Gerhardt, L. D.....Martinsburg.
Gibson, Braxton D.....Charles Town.
Gilkeson, H. B.....Romney.
Glasscock, S. F.....Morgantown.
Greene, S. S.....Charleston.
Guard, Chas. P.....Grafton.
Hall, S. B.....New Martinsville.
Hall, Wm. McG.....New Martinsville.
Hamill, Jas. L.....Welch.
Hamilton, J. M.....Grantsville.
Handlan, J. B.....Wheeling.
Harmer, Harvey W.....Clarksburg.
Hart, E. A.....New Cumberland.

Harvey, Thos. H.....Huntington.
Hearne, Wm. H.....Wheeling.
Henritze, T. L.....Welch.
Herndon, I. C.....Welch.
Hervey, Henry C.....Wellsburg.
Heyer, J. B.....Madison.
Higginbotham, C. C.....Buckhannon.
Hogg, Chas. Edgar.....Pt. Pleasant.
Hoke, J. T.....Windsor, Nova Scotia.
Holiday, O. L.....Moundsville.
Holt, J. Howard.....Moundsville.
Hood, O. A.....Bayer.
Howard, A. R.....Pt. Pleasant.
Howard, Jno. A .....Wheeling.
Hubbard, W. P.....Wheeling.
Isbell, L. D.....Huntington.
Jackson, Malcolm.....Charleston.
Jackson, Wm. W.....Parkersburg.
Jacobs, T. P.....New Martinsville.
Jeffords, Tracey L.....Harpers Ferry.
Columbian Bldg., Washington, D. C.
Johnson, Okey.....Morgantown.
Johnson, Jas. S.....Parkersburg.
Johnson, Geo. W.....Parkersburg.
Johnson, Clyde B.....St. Marys.
Keller, B. F.....Bramwell.
Kenney, A. E.. .....Charleston.
Kilmer, W. C.....Martinsburg.
Kingsley, E. R.....Parkersburg.
Knight, E. W.....Charleston.
Koontz, J. R.....Ansted.
Kramer, C. W.....Piedmont.
LaFollette, L. M.....Charleston.
Laird, J. F.....Parkersburg.
Leftwick, F. C.....Madison.
Lindsay, Ward B.....Martinsburg.
Logan, J. D.....Union.
Lucas, D. B.....Charles Town.
Marshall, O. S.....New Cumberland.

Martin, F. T.....Fairmont.
Mason, John W.....Fairmont.
Matheny, C. W.....St. Marys.
Mathews, D. E.....Huntington.
Meighen, B. F.....Moundsville.
Melvin, Thayer.....Wheeling.
Menager, Jas. B.....Pt. Pleasant.
Merrick, C. D.....Parkersburg.
Meyer, W. C.....Wheeling.
Miller, W. N.....Parkersburg.
Miller, J. H.....Hinton.
Mollohan, W.....Charleston.
Moreland, Joseph.....Morgantown.
Morton, E. H.....Addison.
Morris, C. E.....Wheeling.
Morris, Presley W.....Parkersburg.
McClintic, G. W.....Charleston.
McClintock, L. M.....Charleston.
McCluer, Jas. S.....Parkersburg.
McDonald, Wm.....Keyser.
McDonald, Angus W.....Charles Town.
McGary, W. B.....Weston.
McGraw, Jno. T.....Grafton.
McKenzie, J. E.....New Cumberland.
McMahon, Richard R.....Harpers Ferry.
McNeal, N. C.....Marlinton.
McWhorter, J. M.....Lewisburg.
McWhorter, J. C.....Buckhannon.
Nadenbusch, A. C.....Martinsburg.
Nesbitt, Frank W.....Wheeling.
Nuckolls, E. L.....Fayetteville.
Noll, Allen B.....Martinsburg.
Oldfield, J. A.....St. Marys.
Osenton, Chas. W.....Montgomery.
Palmer, Jno. C. Jr.....Wellsburg.
Patton, A. G.....Parkersburg.
Payne, W. Dallas.....Charleston.
Peterkin, Wm. G.....Parkersburg.
Pifer, Felix C.....Buckhannon.

Pitzer, U. S. G.....Martinsburg.
Poffenbarger, Geo.....Pt. Pleasant.
Poole, X.....Martinsburg.
Post, Melville D.....Grafton.
Poundstone, A. M.....Buckhannon.
Preston, A. D.....Fayetteville.
Preston, Jno. A.....Lewisburg.
Price, Geo. E.....Charleston.
Profitt, J. E.....Parkersburg.
Quarrier, R. A.....Charleston.
Reay, D. C.....Morgantown.
Reed, T. N.....Hinton.
Reynolds, F. M.....Keyser.
Riley, T. S.....Wheeling.
Robinson, Ira E.....Grafton.
Rucker, E. P.....Welch.
Rucker, H. Scott.....Huntersville.
Russell, H. M.....Wheeling.
Scott, W.....Clarksburg.
Sheppard, J. A.....Williamson.
Showalter, E. M.....Fairmont.
Simms, H. C.....Huntington.
Smith, S. G.....Wheeling.
Smith, Harvey F.....Clarksburg.
Smith, E. G.....Clarksburg.
Smith, Levin.....Parkersburg.
Smith, Wm. F.....Sistersville.
Smith, C. A.....Parkersburg.
Snider, Millard F.....Clarksburg.
Spencer, J. S.....Pt. Pleasant.
Sperry, M. G.....Clarksburg.
St. Clair, J. G.....Grafton.
Stewart, Edward B.....Morgantown.
Stifel, L. F.....Wheeling.
Stiles, M. F.....Charleston.
Stokes, W. H.....Welch.
Strader, J. F.....Beverly.
Strauss, W. M. .....Parkersburg.
Sturgiss, Geo. C.....Morgantown.

Summerville, J. B .....Wheeling.
Talbott, E. D.....Beverly.
Taylor, Blaine W.....Elkins.
Thompson, M. M.....Clarksburg.
Thompson, W. R.....Huntington.
Trapnell, Benj .....Charles Town.
Turner, S. D.....Parkersburg.
Vandervort, J. W.....Parkersburg.
Van Sickles, H. L.....Lewisburg.
Van Winkle, W. W.....Parkersburg.
Vinson, Z. T.....Huntington.
Walker, Stewart W.....Martinsburg.
Watts, C. C.....Charleston.
Wehrle, John.....Charleston.
Wells, Frank C.....New Martinsville.
Westenhaver, D. C.....Martinsburg.
White, Robert.....Wheeling.
White, W. J.....Morgantown.
Wiley, W. S.....New Martinsville.
Wilgus, T. B.....Morgantown.
Wilson, E. W.....Charleston.
Wilson, W. G.....Elkins.
Wilson, J. R.....Hamlin.
Willey, W. P.....Morgantown.
Williams, L. J.....Lewisburg.
Willis, M. H.....West Union.
Woods, J. J.....Wheeling.
Woods, J. Hop.....Philippi.
Woods, H. B.....Harrisville.
Woods, J. M.....Martinsburg.
Woods, Sam'l V.....Philippi.
Wotring, D. M.....Kingwood.
Worley, W. G.....Kingwood.
Wysong, W. S.....Addison.

# CONSTITUTION AND BY-LAWS

## CONSTITUTION

### OF THE WEST VIRGINIA BAR ASSOCIATION.

1. This Association shall be known as "THE WEST VIRGINIA BAR ASSOCIATION."

#### Object.

2. The Association is formed to advance the science of jurisprudence; to promote reform in the law; to facilitate the administration of justice; to uphold integrity, honor and courtesy in the legal profession; to encourage thorough liberal education, and to cultivate cordial intercourse among the members of the bar.

#### Membership.

3. The members of the legal profession attending this convention this 8th day of July, 1886, are hereby declared to be members of this Association, provided, they shall, during this present session, pay the admission fee hereinafter mentioned.

Any member of the legal profession of West Virginia, of good standing, residing therein, may become a member of the Association upon nomination and vote, as hereinafter provided.

#### Election of Members.

4. All nominations for membership shall be made by the Committee on Admissions, and must be transmitted in writing to the President and by him reported to the Association, and the Association shall thereupon vote by ballot. Several nominees may be voted for upon the same ballot, and in such case, placing the word "no" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and

against those only. One negative vote in every five shall suffice to defeat an election. No member of the bar, residing in a county where there is a local Bar Association shall become a member of this Association unless he shall also be a member of such local Association.

## Officers.

5. The officers of the Association shall be a President, who shall be ineligible to re-election on the expiration of his term; one Vice-President from each Congressional district represented by membership in the Association; a Secretary and Treasurer. All of these shall be elected at the annual meeting and hold their offices until the next annual meeting of the Association and until their successors are elected. A majority of votes shall be necessary to the election of officers, including the election of the Executive Council. Such election shall be by ballot.

## Committees.

6. At the annual meetings the Association shall elect an Executive Council, to be composed of five members and the President and Secretary.

The President shall, with the approval of the Executive Council, appoint the following standing committees, towit:—

A Committee on Admissions.

A Committee on Judicial Administration and Legal Reform.

A Committee on Legal Education.

A Committee on Grievances.

A Committee on Legal Biography.

A majority of the members of every committee who may be present at a meeting of the Association shall constitute a quorum of such committee, for the purpose of such meeting.

Every committee shall, at each annual meeting, report in writing a summary of its proceedings since the last annual report, together with any suggestions deemed suitable, and appertaining to its powers, duties or business. A general summary of all such annual reports, and the proceedings of the meetings, shall be prepared and printed by and under the direction of the Executive Council, together with the constitution,

by-laws, names and residences of officers, standing committees and members of the Association, as soon as practicable after each annual meeting.

## Final Action.

7. No action of this Association of a permanent nature or recommending changes in law or the administration of justice, shall be had until the subject-matter thereof shall have been reported upon by the appropriate committee to which the same shall have been referred, unless this regulation shall be suspended by a two-thirds vote of the members voting thereon.

## President.

8. The President, or in his absence the Vice-President, senior in years, shall preside at all meetings of the Association, and the President shall deliver an address at the opening of the annual meeting next after his election.

## The Executive Council.

9. This Council shall manage the affairs of the Association, subject to the provisions of the constitution and by-laws, and shall be vested with the title to all its property, as trustees thereof, and shall make by-laws for the Association, subject to amendment by the Association.

## Committee on Admissions.

10. The proceedings of this committee shall be deemed confidential and shall be kept secret so far as written or printed reports of the committee shall be necessary and officially made to the Association.

## Committee on Judicial Administration and Legal Reform.

11. It shall be the duty of the Committee on Judicial Administration and Legal Reform to take notice of all proposed changes in the law, and to recommend such as may be in their opinion entitled to the favorable influence of the Association; and, further, to observe the working of the judicial system of the

State, to collect information with reference thereto, and to recommend such action as they may deem advisable.

### Committee on Legal Education.

12. It shall be the duty of the Committee on Legal Education to examine and report upon any proposed changes in the system of legal education and of admission to the practice of the profession in the State of West Virginia.

### Committee on Grievances.

13. The Committee on Grievances shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law and administration of justice, and report the same to the Association with such recommendations as they may deem advisable.

The proceedings of this committee shall be deemed confidential and kept secret, except so far as reports of the same shall be necessarily and officially made to the Association.

### Committee on Legal Biography.

14. The Committee on Legal Biography shall provide for the preservation among the archives of the Association of suitable written or printed memorials of the lives and characters of deceased members of the West Virginia Bar.

### Secretary.

15. The Secretary shall keep a record and conduct the correspondence of the Association and perform the usual duties of such office.

### Treasurer.

16. The Treasurer shall collect, and by order of the Executive Council disburse, all funds of the Association, and keep regular accounts, which at all times shall be open to the inspection of any member or members of the Executive Council.

### Annual Meeting.

17. This Association shall meet annually at Parkersburg or such other place and at such time as shall be fixed at each session of the Association. It shall be the duty of the Secretary

to mail to each member a written or printed notice of the time and place of each annual or special meeting at least four weeks in advance of each meeting. Those present at such a meeting shall constitute a quorum.

## Dues.

18. The admission fee will in all cases be five dollars. The annual dues of members shall be three dollars, to be paid yearly on or before the first day of the annual meeting of the Association, and no person shall be qualified to exercise any privilege of membership who is in default.

## Amendments.

19. This constitution may be altered or amended at any annual meeting on the recommendation of the Executive Council, by a vote of the majority of the members present, or without such recommendation by a vote of two-thirds of the members present.

## Expulsion.

20. Any member may be expelled by a majority vote of this Association at any annual meeting.

## Resignations.

21. Any member may resign at any time upon the payment of all dues and charges to the Association, including his annual dues for the current year in which the resignation is tendered; provided, there be no charges for misconduct pending against such member.

From the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer that all dues have been paid, as above provided, the person giving such notice shall cease to be a member of the Association.

# BY-LAWS

## OF THE WEST VIRGINIA BAR ASSOCIATION.

1. The Executive Council, at its first meeting after each annual meeting of the Association, shall select some person to make an address at the next annual meeting, on the life and service of any deceased members of the bench or bar of West Virginia of eminence, or other subjects; and also not exceeding five members of the Association to read papers.

2. The order of business at the annual meeting shall be as follows:—

*a.* Annual address of the President.

*b.* Report of Committee on Admissions and election of members.

*c.* Report of the Secretary.

*d.* Report of the Treasurer.

*e.* Report of Standing Committees:
Executive Council.
On Judicial Administration and Legal Reform.
On Legal Education.
On Grievances.
On Legal Biography.

*f.* Report of Special Committees.

*g.* The Nomination of Officers.

*h.* The Appointment of Standing Committees.

*i.* Miscellaneous Business.

*j.* The Election of Officers.

The address to be delivered by a person invited by the Executive Council, shall be at the morning session of the second day of the annual meeting, and the reading of papers by the members appointed by the Executive Council shall be on the same day, unless the Executive Council shall designate some

other time for the address and reading of papers. After the reading of each paper an opportunity shall be given for discussion on the topic of the paper.

The Executive Council shall publish at least four weeks in advance of each annual meeting a statement of the name of the person who is to deliver the annual address, and the names of those who are to read papers, and the subject of each; and the Secretary shall forthwith transmit a copy to each member.

3. No person taking part in a discussion shall speak more than ten minutes at a time or more than twice on one subject.

A stenographer shall be employed at each annual meeting.

4. At any of the meetings of the Association, members of the bar of any foreign country or of any State other than West Virginia, who are not members of the Association, may be admitted to the privilege of the floor during such meeting.

5. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the report of committees and all proceedings of the annual meetings shall be printed; but no other address made or papers read or presented shall be printed, except by order of the Executive Council. Extra copies of reports, addresses, and papers read before the Association may be printed for the use of their authors, not exceeding one hundred copies to each of such authors. The Executive Council, as a committee on publication, shall meet within one month after each annual meeting, at such time and place as the Chairman shall appoint.

6. The term of office of all officers, including the Executive Council, elected at an annual meeting, shall commence at the adjournment of such meeting; but the term of office of the members of the several committees appointed by the President, shall commence immediately on their appointment.

7. Each committee shall elect its officers, whose term of office shall commence on their election and continue until the appointment of a new committee; and each standing committee shall continue until its successor shall be appointed.

8. All standing committees shall meet on the day preceding each annual meeting at the place where the same is to be held, at such hour as the respective chairmen shall designate.

9. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

10. The Treasurer's report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the chairman of the Executive Council.

11. No resolution complimentary to an officer or member for any service performed, paper read or address delivered shall be considered by the Association.

12. Any charges of unprofessional conduct against any member of the Association, if made in writing and signed by the person preferring them, shall be investigated by the Committee on Grievances, who shall recommend to the Association such action as they may deem proper, but no action shall be taken by said committee or this Association without due notice to and the service of the charges upon the accused.

# ADDRESSES DELIVERED

# AND

# PAPERS READ.

# PRESIDENT'S ADDRESS.

## THIS ASSOCIATION, ITS WORK, PAST AND PROSPECTIVE.

By W. Mollohan.

Much has been said, and truthfully so, of the great influence wielded by the legal profession in governmental matters. This influence is not alone confined to such matters, but extends to all matters of a quasi-governmental character. The course and results of almost all public gatherings are guided and shaped by the action of members of that profession. That such is the fact is a matter of almost every day's observation. It was by the guiding hands of the members of this profession that the States formerly arrayed against and at war with the Government were rehabilitated and their relations with the National Government so effectually restored, that from anything existing to-day, it could not be discerned that their relations therewith had ever been broken or even strained.

The Supreme Court of the United States, composed of able and distinguished members of the profession, and presided over by that great lawyer and statesman, Salmon P. Chase, took up the broken relations and the many complicated and difficult questions arising out of them and restored them upon the principles embodied in the Constitution, brushing aside and excluding from consideration all the animosities and passion which had been engendered upon the field of battle or subsequently in legislative halls.

As in the past, so in the future, must the people continue to rely upon the profession for the correct solution of all difficult questions of such a character.

This is strikingly illustrated at the present time in the selection, by the President of the United States, of an able

and distinguished member of the profession as his Secretary of War, before whose department are arising daily most intricate and difficult questions as to the control and management of the countries which have been either directly or indirectly brought under the dominion of this country. His predecessor, although a man well versed in the routine affairs of the department, and to some extent in the affairs of government, was found totally unqualified for the ready and correct solution of questions of this character.

In order that the profession shall continue to maintain this high degree of usefulness in the future it is necessary that it should be characterized by a high degree of learning and rectitude, and that it should always recognize this as the fundamental principle of its own guidance and conduct. It is generally believed among the best of the profession that an organization of this character can exert a greater influence to bring about these results than can be possibly attained in any other way, and these purposes are well and admirably stated in Article II. of the Constitution of the Association, to-wit: "To advance the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to uphold integrity, honor and courtesy in the legal profession, to encourage thorough liberal education, and to cultivate cordial intercourse among the members of the bar." It is believed that this fully and completely comprehends all the purposes for which an association of this kind can legitimately exist, and that the successful accomplishment of these results, as stated in your Constitution, if faithfully and vigorously pursued can be largely obtained.

In one respect the Association can congratulate itself that substantial progress has been made. It was manifest that before and at the time of its organization large additions were being made to the ranks of the profession of persons utterly unfitted in the acquirement of legal knowledge to enter upon the high and responsible duties of this profession. The statute, governing admission to the bar, then in existence, as enforced and observed by the Judges had become a mere matter of form, and furnished no assurance whatever that the successful appli-

cant was in point of acquirements fitted for the profession. The applicant, without the faintest comprehension of the legal knowledge requisite for the practice of the profession, and without exerting himself in its acquirements, sought out a Judge upon whom he, his friends or relatives, had some peculiar influence, often acquired through matters political, and presented himself for examination, and in almost every instance the mere application carried with it the guaranty of a successful result. When the applicant had once procured the signature of one Judge, the presentation to and approval of it by the other Judges were simply a matter of form.

In some States practically no necessary course of study was requisite for admission to the bar. Attorneys admitted under these loose systems were coming into our State, without the slightest knowledge of the principles of law, settling down and qualifying upon such admissions. In one or two instances individuals, without any qualifications as to learning, had the temerity to present themselves for examination before the Judges of the Court of Appeals, and being there rejected, straightway, without any further preparation, sought out friendly Circuit Judges, where they were of course successful; and to the amazement of the members of that Court, which had rejected them, these persons soon thereafter reappeared and qualified to practice in the Court of Appeals upon the licenses thus procured.

It can not be readily supposed that persons who did not appreciate the importance of some degree of learning before their admission would do so afterwards, and consequently we find in almost every county numerous attorneys thus admitted, hanging around the outskirts of our courts, extensively figuring before Justices of the Peace, stirring up broils and strife, and bringing reproach and dishonor upon the profession.

This Association, at an early period of its history, appealed to the Legislature to enact a measure which would prevent this growing evil. The Legislature could not be brought to comprehend the necessity of the measure, and by their action and consideration thereof appeared to be in favor of the free and unlimited coinage of attorneys at law, and regardless of any ratio of learning whatever or of the many standards thereof.

The legislators regarded our efforts in some degree as a measure to restrict the profession to the benefit of those who were already members. By continued and persistent efforts, and with the aid of some of our members, who were members of that body, the Act of February 11th, 1897, was passed. This Act has produced good results, yet some of its provisions, and the course of the Court of Appeals thereunder, have been the subject of extensive criticism on the part of the profession.

Without the slightest purpose or intention to reflect upon the University or its able professors, it is believed by many that the provision of the Act, which permits admissions and qualification alone upon graduation in the Law Department of the University should never have been incorporated in the Act.

In fact this provision some time before the passage of the Act was discussed in and condemned by a vote of this Association. The Law Schools in some of the other States have enjoyed a high reputation for the thoroughness of their course of study, yet by the provisions of the statutes of such States the graduates from these institutions have to stand an examination like other applicants, and in numerous instances many of such graduates were rejected.

If this provision is right, it is difficult to perceive why the same rule should not be prescribed as to the graduates of any other reputable Law Schools, such as Harvard, Yale, Columbia, University of Virginia, and of Michigan.

Every day's observation establishes the fact that the graduates of these institutions are not inferior in point of learning to the graduates of our own University.

It is also difficult to see any reason why a private practitioner, jealous of his reputation and standing, will not see to it that the student coming out of his office is as thoroughly equipped as the student who comes from the law school.

It is also believed by many that the rule adopted by the Supreme Court making the professors of the Law School the sole board of examinations has not tended to popularize the provisions of the Act. It is certainly inconvenient to require every applicant to travel to Morgantown to be examined, and the necessary expenses therefor are a grievous burden to many

worthy applicants. It is feared by many that this will hazard the existence of the statute, and induce the Legislature to return to something like the old system, and there is danger that such will be the result.

The system adopted in some of the other States, notably in the State of Ohio, is thought by many to be the better one. There the Court appoints boards of examiners consisting of learned members of the profession, who hold their examination at central or convenient places, and before whom all applicants must appear.

There are undoubtedly defects in the statute as it now exists, or in the interpretation of it given by the Courts. A party who cannot pass the examination as required by our Board, can go to other States, where hardly any standing of learning is required, there procure his admission, return here, qualify on such admission, settle down, and enter upon the practice. Instances of this kind have occurred. The statute should require every party who has been admitted in another State and comes to our State to settle and enter upon the practice of law to submit to an examination, otherwise no uniform standard of qualification can be maintained. Such a provision now exists in the statutes of other States. While it is a source of gratification to the Association that advancement has been made in the foregoing respect, yet it must be admitted that no great degree of progress has been made in the accomplishment of other objects expressed in the article of the Constitution before alluded to. It is a fact well known that at many of the bars of the State there are members, who on account of their character and practices, rightfully and properly ought to have no place in the profession. They engender strifes, stir up difficulties, corrupt witnesses, improperly aid in the selection of juries, and use improper means to influence the verdicts and are not candid or fair with the Courts. They do not deal fairly with their clients, and resort to grossly improper means to secure success in their cases.

The Justices of the Peace are useful and valuable officers, when they properly discharge their duties, but it is obvious that the course of procedure before many of them, under the

influence of this class of practitioners, is not only a farce upon justice, but in many instances is actually criminal.

How often is the expression heard that Justice So-and-So belongs to such and such attorneys. And the facts in many instances justify the expression.

It is a well recognized fact, that in many instances our Boards of County Commissioners enter upon schemes highly injurious to the tax payers, and often in direct violation of the statutes, yet in almost every such instance, they vouch the advice and approval of some such attorney.

From the ranks of the profession come the prosecuting attorneys of the counties. The welfare, peace and order of the communities depend more upon the honesty and unflinching discharge of duty upon the part of this class of officers than any other, yet it is a painful fact to mention, that some of these officers, instead of bringing law-breakers to justice, have actually been their protectors. It has been known in many counties that persons have been permitted to conduct certain classes of business and practices with an assurance from the prosecuting attorneys of immunity of prosecution for their acts; and in some instances this course of conduct on the part of the violators of the law was permitted either to repay political favors rendered or for an actual money compensation. These are unpleasant statements to make, but nevertheless they are facts, and some vigorous action should be taken to eliminate all such classes from the profession. It is difficult to see how this Association by its direct action at its annual meetings can effectually and successfully remedy these obviously existing abuses. It is believed, however, that they can take such action as will go far towards eliminating these evils.

If this Association would require that its members form local bar associations in the counties where they reside, and prescribe the method of their organization, their committees, and the duties of such committees, and further prescribe that all complaints of misconduct on the part of attorneys presented to the proper committees of such associations, or coming to their knowledge, apparently well founded, should be thoroughly investigated, and proper action taken in respect thereto, it is believed

that then a method would be provided which would directly reach these abuses. The existence of such organizations and their purposes would of themselves exert a wholesome restraint upon, and be a terror to, such evil practitioners.

Some years ago such practices on the part of certain attorneys in one of the large cities of this country had been carried to such an extent as to amount almost to an actual perversion of justice. The inhabitants of that city comprehending such fact by daily occurrences in their Courts, and in the community, rose up in their might and in their wrath and burned down their Court House. The reputable attorneys of that city, startled by this event, organized a bar association, and adopted the most stringent means to eliminate the dishonest and dishonorable practitioners, and to investigate and punish all such abuses. From this course of conduct that association has never deviated, and such practices are now hardly known in that city among the profession. It is the plain duty of the profession to eliminate this class of practitioners and these abuses from the profession and some positive and affirmative course of procedure should be adopted on its part to accomplish this much desired result, and it is believed and submitted that the course I have here to-day recommended would be most effective for attaining such purposes.

It is believed that useful results of action on the part of this Association may not be confined alone to the foregoing matters, but that its concerted action in other matters connected with the administration of the business of the Courts in several particulars may be productive of beneficial results.

I therefore wish to briefly call the attention of the Association to the following matters: It is known to practitioners in the Court of Appeals of this State that until about a year ago by the rules of that Court there was allowed to the appellant or plaintiff in error in the oral argument of cases therein three hours, and to the appellee or defendant in error, two hours. Under the present rules there is allowed to the appellant or plaintiff in error one hour and a half, and to the appellee or defendant in error, one hour. The expediency of this change has been questioned and generally doubted by the practitioners

in that Court. It is hardly conceivable that counsel can separate, point out to the Court, and argue the questions arising in cases with any degree of satisfaction to themselves or in such a manner as to properly aid the Court in the disposition of cases, within the time allowed them. The records are often voluminous, many substantial questions of error are involved therein, and cases are usually argued by two counsel on each side, and thus to restrict each of such counsel on the respective sides to the brief period of forty-five and thirty minutes tends in many, probably in a large majority of cases, to deprive the parties of a fair presentation of their cases, and can be of no practical assistance to the Court.

The Supreme Court of the United States allows to the appellant or plaintiff in error three hours, and to the appellee or defendant in error, two hours, and so thoroughly are they convinced of the utility and advantage of the oral presentation of cases, and of the assistance rendered to the Court in its disposition thereof, that in many cases the Court of its own motion extends the time for such oral arguments. It is thought by many that if our Court would cause their docket to be so arranged as to give spaces of time between the hearing of the causes, and a fair time given for the argument of the cases orally, that the labor of the Court would be much diminished and the causes probably disposed of in a more satisfactory manner both to the Court and the parties litigant.

Another matter has been the subject of very general comment on the part of the bar of the State, and to some extent among the people. It is as to the inconsiderate and hasty manner in which injunctions are granted and receivers appointed by some of the Judges of our Circuit Courts. If at all possible, no order of any Court ought ever to be made affecting the rights or properties of the citizens without giving them an opportunity to appear and present reasons against it. It is an easy matter for a party in an *ex-parte* proceeding to present an apparent state of facts for the purpose of obtaining an injunction or the appointment of a receiver, and how often is it the case that when the opposite party is heard such showing vanishes

as the snow of winter. And it is thereby clearly demonstrated that no such orders ought ever to have been made.

The granting of inconsiderate injunctions and the hasty and *ex-parte* appointment of receivers and the administration of such receiverships as conducted by the Courts are frequently destructive of the rights of parties and of their business operations.

The evils resulting from such action can thereafter never be fully rectified by the Courts. In every case the showings made for the granting of injunctions and the appointment of receivers should be ample, full and complete, and whenever practicable, such applications should be set down for hearing on a future day, and notice of such hearing given to the opposite parties.

I have endeavored in this address to call the attention of the Association alone to practical questions, wherein its action might in my judgment be of benefit to the profession and the administration of justice in our Courts, and if the matters so presented shall receive due and proper consideration by the Association, I consider that the objects and purposes of the address have been largely realized.

And in conclusion permit me, gentlemen, to congratulate you heartily upon the progress already attained by our Association, though still in its youth, towards elevating and upholding our profession, and to assure you that by a vigilant and steadfast adherence to our principles the objects of our organization will meet with a full reward and a rich fruition, and the Bar Association of West Virginia will become a pride to its members, as well as a blessing to the State at large.

# ANNUAL ADDRESS.*

## THE CITIZEN AND THE REPUBLIC.

By Hon. Armistead C. Gordon.

I esteem it a great honor to be permitted to address so distinguished and representative body as this; and knowing that to no men can I speak with more certainty that my words will be rightly weighed than to my brethren of the Bar, I have chosen as the subject for your consideration the attitude of the Republic to the Citizen at the close of the Nineteenth Century.

It is because of my assurance that the legal mind is accustomed to regard all questions judicially, that I venture into a domain which encompasses alike the fervor of partisanship and the moderation of philosophy; but I beg to assure you that the ideas which I am to present grow out of no intemperance of feeling, however much they may wear the appearance of a brief for a litigant.

The last half of the Nineteenth Century now closing has witnessed an evolution of wealth and a revolution of society, the like of which is recorded in no written history of the world. "The Golden Age, of which the poet writes as being in the past," says St. Simon, "lies before us;" but the prophesy of the earlier Socialist, has been reversed in the fulfilment. Instead of the Golden Age, we have reached the Age of Gold. The advancement of every factor creating wealth and developing trade and commerce has become stupendous; while scarcely less wonderful has been the progress in the evolution of the individual. Universal opportunity of education and universal suffrage have contributed tremendously to the development of individualism; yet on the other hand neither universal education nor universal suffrage has been able to delimit the powers of class and privilege based upon aggregated wealth. The social evolution has

* Delivered at the meeting of 1900.

not kept adequate pace with the evolution of capital and the growth of riches. Vast enterprises, once undreamed of, embracing in their scope dominion and power beyond the fabled influences of the genii; the growth of mighty cities whose populations dwarf the figures of statisticians; the momentous and extraordinary invention and improvements of machinery; the almost miraculous discoveries of practical science, and the consequent revolution in industrial methods; the comparative annihilation of time and space in the means of communication through electricity and steam; the possibilities of luxury and power incident to the possession of wealth exceeding accurate computation,—all these are the material characteristics of the age, and have in no other section of the world been so phenomenal as in America. Mr. Frederick Harrison, in describing the Rome of eighteen hundred years ago, says that "power so colossal, centralization so ruthless, luxury so frantic,"[1] as those of the Imperial City, the world had never witnessed. Yet in the American Republic of to-day these things exist on a scale and with a radius that Rome itself never knew.

An expert, discussing in 1895 the extent of commercial values and the volume of business in the United States, says: "With the tenfold increase in populated area of the country, our population is fifteen times as large as it was at the close of the last century, while the increasing complexity of governmental administration has increased total receipts from customs and internal revenue thirty-five times what they were in 1795. It may be no more than a coincidence, but it is certainly noteworthy that an increase of fifteen hundred per cent in population has brought with it almost the same increase in the total annual volume of exports and imports. The fact that total gross railway earnings have doubled in seventeen years is far less significant than that they are in excess of the total volume of our exports of merchandise, produce, coin and bullion. But of even greater interest is the fact that the annual volume of bank clearings at about eighty cities throughout the United States, indicates a grand total of domestic and foreign trade

1 Fortnightly Review: New Series No. cccxvii.

probably forty times greater than the total value of exports and of imports. There remains only to be recalled the increase of our interior commerce to thirty-eight times the volume of our business with foreign countries, over and above which is the picture of the total wealth of the country—nearly seventy-five times what it was at the beginning of the century."[1]

These figures are startling in their significance. Expenses incidental to governmental administration, growing with the growth of that great wealth, point to a centralization of power in government undreamed of by the makers of the Federal Constitution; while the corresponding centralization of business is illustrated by the portentious fact that the earnings of the railroads exceed the value of our exports. The banks of eighty great cities, consolidated in each into a formidable confederacy known as a "Clearing House," have gathered into their capacious control a volume of business forty times larger than the total value of our exports and imports combined; while our interior commerce is thirty-eight times greater than that which we have with the world.

Everywhere the consolidation of power in business is reflected in a similar and apparently irresistible tendency in government. The era of the railway pool, the manufacturing trust, the commercial combination is also the era of exaggerated legislative, executive and judicial influence. In every direction the individual is confronted by the aggregation; everywhere the citizen is touched by the government. There are trusts and monopolies in manufacturing industries, monopolies of mineral wealth, monopolies in trade, monopolies in the labor market; monopolies of transportation and of communication, municipal monopolies, and monopolies entirely dependent upon government. A distinguished French economist has said that the task of socialism has been prepared by the great concentration of industries which is one of the most marked characteristics of our age, and which renders the process of confiscation or "expropriation" comparatively easy."[2]

Hand in hand with industrial consolidation goes legisla-

1 One Hundred Years of American Commerce. Page 45.
2 Gabriel Deville. See 2 Lecky's Democracy & Liberty. Page 345.

tion, statute-mad. There is no evil that cannot be cured by enactment. The police power of the State is exaggerated in all directions. Sumptuary legislation, labor laws, protective tariffs, pension laws, homestead exemptions, stay laws, poor debtor's laws, all emphasize the tendency. The spirit of governmental protectionism has become a dominant factor in the evolution of modern society. "Nearly everywhere," says Mr. Lecky, in his *Democracy and Liberty*, "the old Free Trade doctrine is a vanquished and a declining creed, and the chief disputes relate to the forms which protection should take, to the degrees to which it may be wisely carried to the advantage of establishing a preferential treatment in favor of different parts of the same empire."[1]

"The hours of labor have been wisely limited," says a distinguished and representative citizen of New York, addressing the voters: "the working men have been given a preferred claim for their wages over all others; the safety of working men employed in dangerous trades like those which involve the use of scaffolding has been secured; the competition of the convict has been guarded against; rigid provisions have been made to lessen the evils of work in sweat shops, and to protect the health and comfort of those who work in their own rooms in tenement houses; similar laws have been established for the benefit of those employed in bakeries and mines. It has also been provided that the State should not directly or indirectly pay a less rate of wages than the current."[2]

The laws above enumerated as existing in the State of New York constitute but an insignificant fraction of the many enactments for the protection of labor that crowd the statute books of every State in the Union, the general characteristic of all of which is that they seek either to give the industrial laborer special privileges, or else to control his actions or the actions of his employers, or of other employes in his peculiar interest. Mr. F. G. Stimson, in a striking magazine article published in 1897, enumerates a mass of legislation enacted in behalf of the laboring man, and covering more than fifteen hun-

1 Vol. 2, page 464.
2 Hon. Theodore Roosevelt at Glen Falls, N. Y., Oct. 17, 1898.

dred separate and distinct laws, all made within a period of ten years by the legislature of the several American States.[1]

The same protective spirit has served to propagate a low standard of private morality in the fallacious interposition on behalf of "the poor man" of poor debtors' laws, stay laws and homestead exemptions, which on the one hand suggest to him the propriety of contracting a debt which he cannot be compelled to pay, and on the other deny to him the credit which is often to him an inevitable necessity. The establishment by some of the States of state employment bureaus would indicate, says Mr. Stimson, "a general legislative movement which will throw upon the State the permanent duty of inquiry whether all its able bodied citizens are employed at satisfactory wages ,and if not, why not; and of finding for them, or such of them as are not satisfied, positions suited to their tastes or abilities, or if that prove impossible, of creating for them some labor by 'anticipation of necessary public work.'"

The theory of the necessity that all the citizens of a Republic, who are some day to participate in greater or less degree in its government, shall be afforded by the State an opportunity of acquiring an education, has by a process of evolution come, in some of the States, to involve the further necessity of free school books, free lectures, and compulsory attendance upon schools.

Having opened the school-house and enacted protection for the laborer, the legislative department of government, ever ready to lend a helping hand to those in trouble, on behalf of his employer confronts him in his extremity with statutes against strikes and improper combinations and associations; while the courts meet his collective efforts to help himself in his struggle against aggregated wealth, with convenient judicial decrees of injunction.

The Federal judiciary has developed and fostered with fertile brain and relentless decision the growth of centralization, both social and political. In construing the power of governmental taxation it has, in the Income Tax case, however constitutionally, none the less overwhelmingly, relieved wealth of its

1 Atlantic Monthly, November, 1897.

equitable share of the burden of government; while in its expansion of the scope of the Inter-State Commerce clause of the Constitution, it has given an impetus to consolidation never contemplated by the fathers of the Republic. In more than a hundred cases, the Supreme Court of the United States has held the laws of the several States to be in conflict with the Federal Constitution; and there have been fifteen cases in which acts of the Congress itself have been declared by that mighty tribunal to be unconstitutional.[1] In the debates on the Federal Constitution the life tenure of the Federal Judges was attacked by the opponents of centralization as dangerous to liberty even beyond the method of their appointment. Edmund Randolph of Virginia, suggested "taking from the President the power of nominating to the Judiciary offices," and "limiting and defining the Judicial Power."[2] George Mason stated as one of his objections to the Constitution that "the Judiciary of the United States is so constructed and extended as to absorb and destroy the judiciaries of the several States; thereby rendering laws as odious, intricate and expensive, and justice as unattainable by a great part of the community as in England; and enabling the rich to oppress and ruin the poor."[3] Mr. Jefferson in 1822, only four years before his death, wrote to Wm. T. Barry: "We already see the power, installed for life, responsible to no authority, (for impeachment is not even a scarecrow,) advancing with a noiseless, and steady pace to the great object of consolidation. The foundations are already deeply laid by their decisions for the annihilation of constitutional State rights, and the removal of every check, every counterpoise, to the ingulfing power of which themselves are to make a sovereign part. If ever this vast country is brought under a single government, it will be one of the most extensive corruption, indifferent and incapable of a wholesome care over so wide a spread of surface. This will not be borne, and you will have to choose between reformation and revolution. If I know the spirit of this country, the one or the other is inevitable. Before the canker

1 Hon. G. F. Hoar, Virginia State Bar Association Reports, Vol. xi. p. 266.
2 1 Elliott's Debates, p. 491.
3 1 Elliott's Debates, 495.

is become inveterate, before the venom has reached so much of the body politic as to get beyond control, remedy should be applied. Let the future appointment of judges be for four or six years and renewable by the President and Senate. This will bring their conduct at regular periods under revision and probation, and may keep them in equipoise between the general and special government. We have erred in this point by copying England, where certainly it is a good thing to have the judges independent of the King. But we have omitted to copy their caution also which makes a judge removable on the address of both legislative houses. That there should be public fuctionaries independent of the nation, whatever may be their demerit, is a solecism in a republic of the first order of absurdity and inconsistency."[1]

Some justification of the apparently radical view held by these three Virginians as to the Federal judiciary is found in its decisions. The assumption to itself by the Supreme Court of the right to act as ultimate arbiter of constitutional interpretation in the case of *Marbury vs. Madison,*[2] was violative of all experience in the knowledge of men trained under the English system of jurisprudence, for it involved the idea that a mere court possessed the high prerogative of "setting aside a law enacted by the legislature and approved by the executive.[3] The doctrine of "sovereign power" enunciated by the Court in the Legal Tender Case was characterized by Mr. Justice Field in his dissenting opinion in these cases as one which would, "if carried to its legitimate conclusion, change the whole nature of our constitution and break down the barriers which separate a government of limited power from one of unlimited power."[4]

A contemporary historian has said: "Holding to a division of American history into the periods of a struggle of factions from 1779 to 1816, a struggle of sections from 1820 to 1860, and a struggle of classes since 1870, we shall see that the Supreme Court has in every instance thrown its influence against popular rights. In the first era the Supreme Court was

1 Jefferson's Writings, p. 353.
2 1 Cranch 137
3 Rogers: Constitutional History as seen in American Law, p. 10.
4 12 Wall. 457.

so violently Federal and partisan that two of the Judges were impeached for packing juries and delivering political harangues while charging juries. In the second era the Supreme Court decided that the black man had no rights as a citizen that a white man was bound to consider. In the third era the Supreme Court has already cast its wavering voice in the social struggle for the wealthy as a class."[1]

Whatever may be thought of the generalization last stated in such broad and emphatic terms, it cannot be gainsaid that the Federal Court of last resort has not considered, as did the Abbe Sieyes, that constitutions could be "made in a closet and fitted like a coat to the back." The Unwritten Constitution of the United States, which even so conservative a publicist as Mr. Woodrow Wilson recognizes and approves, is in the largest measure the handiwork of the Federal judiciary; and its vital essence and spirit are the governmental forces of consolidation and of protection. Mr. Justice Miller some years ago said of the Supreme Court to the students in the Law School of Michigan University: "It has no army, it has no navy and it has no purse. It has no patronage, it has no officers except its clerks and marshals, and the latter are appointed by the President and confirmed by the Senate." But Professor Henry Wade Rogers' comment upon this statement is pregnant with significance. "Feeble as it may thus appear to be," he says, "yet in reality the Supreme Court of the United States is more powerful in its influence on the character of the government than is the President or the Congress. It may decide that what the Congress and the President have sought to enact into law is not law, and it may, by construction and interpretation, declare what meaning shall be attached to the Constitution and the laws enacted thereunder, moulding them according to its views."[2] After having witnessed on the 30th of April, 1789, the inauguration of the first President of the Republic, John Randolph of Roanoke, epitomized the hostility of his day to the Federal Judiciary, in saying:

"I saw Washington but could not hear him take the oath

1 Powell: Nullification and Secession. Page 80.
2 Constitutional History. Page 13.

to support the Federal Constitution. I saw what Washington did not see, but two other men in Virginia saw it—George Mason and Patrick Henry—the poison under its wings."

With the growth of consolidation as developed by its judiciary system, a similar evolution of the executive department of the national government has kept accelerated pace. Perhaps no potentate in the civilized world of the century now ending, possesses more plenary power in his sphere than does the President of the United States. An able and impartial jurist and writer upon political institutions has summarized this presidential power as follows:

> 1. The right of the President to dismiss his subordinates at will. 2. His unqualified power of giving sole expression of the sovereign will of the United States to foreign nations. 3. His exclusive power of determining when the necessity has arisen of calling out the state militia. 4. His absolute control of the standing military and naval establishments. 5. His power of recognising any state government as the true and lawful one.[1] 6. His power over labor combinations, where by any possibility the principle of the Inter-State Commerce clause of the Constitution may be regarded by him as involved. 7. His power to compromise American relations with foreign powers, and to authorize the invasion of a foreign country and a blockade of its ports prior to a declaration of war by the Congress.[2] 8. His practically unlimited executive powers in a state of war.

To these powers enumerated by Judge Baldwin[3] may be added that of choosing his own successor in case of the death of President and Vice President, through the statute fixing the presidential succession in a body not recognized by the Constitution.

Nor has the Federal Congress failed to progress with its two co-ordinate branches of government in the same direction. Time would fail me to narrate the many leagues that have been

1 Luther vs. Borden, 7 How. 1.
2 The Prize Cases: 2 Black, 635.
3 Political Institutions, p. 108.

traveled by it upon that journey. It is sufficient to recall the destruction by Federal taxation of all the media of commercial exchange other than that of its own issue; the passage of the tenure of office act, in order to curtail executive power;[1] the enactment of the Legal Tender statutes and of the law creating the Sherman certificates; the provisions in 1866, fixing the time and method of the election of United States Senators by the State Legislatures; and the very recent disregard of the constitutional provision in permitting officers of the Federal army appointed by the President and confirmed by the Senate to hold seats upon the floor of the lower House as Representatives.

"No one can be blind," said Mr. Justice Brewer of the United States Supreme Court, in an address to the law students of the University of Iowa, in 1898: "to the fact that there is a growing tendency to have the government at Washington attend to the management of local affairs. Let me illustrate: In the early part of the century, New York dug the Erie Canal. The State did the work and paid the expenses. Now that the enlargement of the canal is needed and the work has been undertaken, the question is being agitated whether the canal itself should not be disposed of to the National government, and it asked to assume the burden of further enlargement. Many years ago the Cumberland Road, a turnpike, running through the Central States, was constructed at national expense; and it was a matter of serious debate whether the government ought to undertake such a work. Now, national corporations exist, operating great transcontinental systems of roads; and to their construction the nation has given bountifully of lands and bonds. These corporations, by virtue of their national character, take all their litigation into the Federal Courts. The banking system of the country is National and not State. Have you noticed how the Congressional River and Harbor Bill, like a rolling snow-ball, grows every year in magnitude; and if rumor be not wholly wrong, it is made up by contributions of representatives from different localities, each seeking an appropriation for some local improvement."[2]

1 Ford: Rise and Growth of American Politics, p. 266.
2 The American Lawyer, August, 1898.

The expenditures of government for the military establishment of the United States, including rivers and harbors, forts, arsenals, sea coast defences, and expenses of the Spanish war during the fiscal year, 1898, were $91,992,000.29; and for the naval establishment, including construction of new vessels, machinery, armament, equipment, improvement at navy yards, and expenses of the Spanish war during the same fiscal year were $58,821,984.80. The significance of these figures in time of war is emphasized by a recurrence to the expenditures for similar items during the fiscal year, 1897, before "expansion" had developed a new politico-economic doctrine, and when we had not yet come to be regarded by foreign nations as one of the biggest and burliest of the international policemen whose functions are to maintain "the peace of the world." In 1897, in time of peace, the total military establishment of the government cost $48,950,267.89 and the total naval establishment $34,561,546.26.[1] When to these figures is added the annual cost of pensions, aggregating about $150,000,000, the salary of the international policemen seems quite a considerable one. Yet the new Militarism pays no heed to this, nor to the warning voice of those who beyond the waters bear "the white man's burden" through force of sheer necessity, and find it almost beyond their strength.

"Imperialism," says Mr. John Morley to his constituents at Brechin, Scotland, in January, 1899, "brings with it militarism, and must bring with it militarism. Militarism means a gigantic expenditure, daily growing. It means an increase in government of the power of aristocratic and privileged classes. Militarism means the profusion of the tax payer's money every where except in the tax payer's own home. And militarism must mean war; and you must be much less well read in history than I take the Liberals of Scotland to be if you do not know that it is not the hateful demon of war, but white-winged peace, that has been the nurse and guardian of freedom and justice and well-being over that great army of toilers upon whose labors, upon whose privations, upon whose hardships,

1 Report of the Secretary of the Treasury, December, 1898.

after all, the greatness and the strength of Empires and of States are founded and built up."[1]

The centralization of wealth has marched forward hand in hand and step by step with the consolidation of government in these latter years of the Republic, until the two have become inseparably connected. That theory of republican institutions, which maintains that the basis of government is property, has found its complementary fulfilment in the wealth that government has enabled its beneficiaries to acquire. The number of millionaires in the United States in 1860 was four; in 1897 their number was something less than five thousand. The United States Commissioner of Labor in a magazine article in 1897, says: "While less than half the families in America are property-less, seven-eighths of the families hold one-eighth of the national wealth, and one per cent of the families hold more than ninety-nine per cent."[2] Judge Cooley in his *History of Michigan,* says: "The war made heavy taxes a necessity; and the government following its ordinary course, raised these for the most part as indirect taxes. In so far as they were levied upon imports, the levy afforded opportunity to discriminate for the protection and encouragement of American products. The heavy tariff thus became in large degree a protective tariff. When the war was over a fearful load of national debt remained, and the war taxes were continued for the general extinguishment of the debt. But when the debt had so far diminished that the heavy taxes could no longer be defended on that ground, the protected industries were found to be so numerous and so powerful that they were quite able to prevent success in any attempt at considerable reduction. The tariff thus became distinctively a tariff for protection; and all the protected interests looked to the Federal government as being at once, to some extent at least, the source and protector of their property."

The combination, consolidation and succession of corporations which are creatures of statute, and of a comparatively very recent date,—the natural product of a commercial society,—have been rendered easy by legislation and judicial interpretation.

1 London Weekly Times, January 20, 1899.
2 Atlantic Monthly, September, 1897.

Labor strikes have followed the organization of labor, seeking to protect itself against the unpitying greed of these artificial creatures of the law; and in the wake of the strike has followed what is known in the phraseology of the day as "government by injunction,"—claimed by its adversaries to be a new and hitherto unexploited extension of the power of the equity courts, wherein justice, according to the old adage, is measured "by the length of the chancellor's foot." Penal and prohibitive statutes, whether enacted by State or Federal legislation, have been apparently inadequate to prevent the combinations of capital at which they are aimed; and the history of more than one great corporation or "trust" in America has become a *chronique scandaleuse*. The pooling of railroad rates by the great trunk line systems of the country has been held by the United States Supreme Court in the Joint Traffic Association case, to be in violation of the Federal Anti-trust law; yet, although the abrogation of pooling apparently followed that decision, there is a belief in some quarters that a verbal agreement has taken the place of the written contract to pool, and that this agreement is known by the euphemistic expression of "an understanding among gentlemen."

While there can never be a war between capital and labor in the sense that either is economically hostile to the other, yet the conflict between those who own and misuse the one, and those whose very existence depends upon the continuance of both, has already begun; and we who stand here to-day are in the midst of the tumult and the noise of the struggle.

Dreamers and prophets and seers have arisen, seeking with words of Utopian promise to point the way to a solution of a perplexing and ever threatening situation. The air is rife with the jargon of the new conflict. Men tell us that the Money Power is a corrupt alliance between property owners and the forces of government, whereby the poorer are robbed under cover of the law for the benefit of the richer; and they seek to hang the tattered garment of their discontent upon the first visible peg. Yet the remedies that are proposed to curtail and curb the powers of associated wealth and government are of a singular if unconscious kinship to the evils they would end. The

socialist dream, differing in detail with the personal views of the individual exponent, but uniform in its principal idea of collectivism, is that the already too powerfully centralized government shall stand *in loco parentis* to the citizen, and shall "protect" him from the ills of a protectionism that is already overwhelming. Socialism, rampant in the European nations, where the strong arm of government is supreme, is a new comer of late years upon American soil, and its advent has been contemporaneous with the latest and largest development of civic and private wealth and power. "Socialism," says Ferdinand Lasalle, its great prophet and exponent, "is a distribution of property by social channels;" and the social channels of distribution which he proposes are those of the State. The assurance of an equality of right to freedom which was Jefferson's idea of the State, is alike an insufficient assurance to the socialist and to the consolidationist. The questions of employment, of wages, of support, of shelter, all enter into the calculations of the former with reference to the functions of government. In the contemplation of the latter, the State must by legislation and judicial decision afford opportunity to one class which it withholds from another; and it must especially protect the rights of property above the personal rights of the individual. For the socialist the government must "secure solidarity of interests, and a community and reciprocity of development." "In a word, the State must by the union of all, help each to his full development."[1] For the centralizationist the government must be so irresistible in its owerwhelming wealth and strength as to preclude everywhere in America a demonstration of that communal power which a great Englishman has characterized as "the red foolfury of the Seine."

"Give us the single tax, and we shall have the economic millenium," says the agrarian follower of Henry George. "Impose penal statutes upon the trust, and enforce them in the courts, and the trust will perish. Legislate us into safety," says the eloquent author of *Wealth against Commonwealth*. "Let the government do all things for us, for we can do nothing for ourselves;" says the dreamer Bellamy, building with master-

1 Rae's Contemporary Socialism, pp. 112, 113.

hand his ideal city in Utopia, where there shall be no doubt of the future, no poverty or want, no political oppression. And so the upper and the nether millstones go around upon each other in the politico-economic mill, and grind the manhood of mankind into infinitesimal dust between them. So, the armies of might and oppression and the armies of discontent and want with battle banners gather for the fray, only to find as they approach each other, though from antipodal stations, that the standards which they carry are the same, that the cause of each converges to one end, and that their common enemy is the individual citizen who is "the unit of the State."[1]

Not in the temper of the partisan, but rather in the spirit of the historian have I sought to lay before you briefly the attitude of the Republic of to-day towards its citizen, as I conceive it. Is it the attitude that should continue as best for him and for the Union? Or is the old notion that the individual who is least governed is best governed to prevail once more some day in the Republic? Is "the unbought grace of life, the cheap defence of nations," to pass away in the splendor of our new wealth and power? Is the dream of the socialist to find its fulfilment in America?

These are the mighty questions which seem to me to lie at the very root of the perplexing problems that confront us, and that promise to confront our children.

It may be that I have seen as through a glass darkly; and that the later history of the Republic, as it presents itself to my view, is a distorted and an illusory history. But as God has given me to see it, I believe that the sole legitimate end of government is to secure and protect the individual citizen in the enjoyment of life, liberty and property; and that when it assumes other functions, or permits other privileges, it becomes the instrument of usurpation and the means of tryanny.

And yet, however far the mighty vessel that bears us all, may seem of late to have veered from her course, because that I do believe in the ultimate saving common sense and patriotism of the plain American citizen, I look with confidence to some future day for her safe return to her charted and certain path.

1 H. W. Grady, Address at University of Va., June, 1889.

And in that faith and with that hope I salute her, as she enters into this new year, that shall carry her into the new Century.

"Thou, too, sail on, O ship of State!
Sail on, O Union, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
We know what Master laid thy keel,
What workmen wrought thy ribs of steel,
Who made each mast and sail and rope,
What anvils rang, what hammers beat,
In what a forge and what a heat
Were shaped the anchors of thy hope!
Fear not each sudden sound and shock,
'Tis of the wave and not the rock;
'Tis but the flapping of the sail,
And not a rent made by the gale!
In spite of rock and tempest's roar,
In spite of false lights on the shore,
Sail on, nor fear to breast the sea!
Our hearts, our hopes are all with thee,
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee,—are all with thee!"

# PRESIDENT'S ADDRESS.

## SOME OBSERVATIONS ON THE LEGAL PROFESSION.

By L. J. Willliams.

One of the objects of the Bar Association, as defined by its constitution, is "to uphold integrity, honor and courtesy in the legal profession."

The members of no other profession are brought into such frequent requisition as are the members of our fraternity; neither has any other profession, or body of men, exercised a more potent influence upon society, and contributed in so large a measure to its evolution and development. This proposition will hardly be controverted by any lawyer who has made even a casual observation of the reforms in governments and in the administration of laws; and a more extended investigation into history will satisfy the minds of most men that in making this claim for the legal profession I do not bestow upon it an unjust share of praise.

The lawyer's services are demanded in both the public and private affairs of men; in the drafting of laws and in the preparation of private agreements and contracts betwen individuals. Besides having his own business affairs to attend to he is often called upon to advise others concerning their business, and sometimes, literally speaking, to attend to other people's business. Hence it is that more frequent opportunities for the exercise of his influence are presented to him than are presented to men of other professions.

My very intimate business relations with many professional lawyers, and my observation of their dealings with others, justifies the further claim, that, as a general rule, among law-

yers as a class of men, the standard of honor and integrity is equal to the standard erected by any other profession.

It is true that the dishonest shyster often finds his way into the ranks of the profession, and by his questionable practices and dishonest dealings brings reproach upon a high and honorable calling. To rid the profession of this excrescence is one of the tasks to which the Bar Association has set itself; and already its labors on this line have produced visible and wholesome results. By the elevation of the educational standard, the credit for which is due to this association, it is rendered much more difficult than it was a short time ago for the shyster to enter the profession and to masquerade as a lawyer under the guise of a license obtained without merit. And it is to be hoped that, through the future efforts of the Association, it will be rendered not only much more difficult than at present, but that it will be made impossible for anyone to obtain a license who does not merit it.

In the medical profession, no one is more vigilant to discover and more active to prosecute the quack than the qualified physician who has earned his license to practice his profession. This disposition, however, to rid the legal profession of the objectionable shyster does not exist among lawyers in so great a degree; perhaps, because of the existence of a feeling of security in the minds of honorable lawyers against the ability of the unqualified and disreputable lawyer to interfere materially with their business success. But this does not relieve the responsibility. We owe it to our profession as a means of elevating the standard of integrity amongst us to rid the profession of this undesirable element.

The practicing lawyer, being an officer of the Court, has a three-fold duty to perform; first, a duty to the State or community at large; second, his duty to the Court; and third, his duty to his client. And while it may be admitted that there cannot be, correctly speaking, any such thing as a conflict in duties, the performance of the highest and most imperative obligations being always the duty where there is a conflict of obligations, nevertheless it is not always easy to determine which of the conflicting obligations should be first obeyed. But,

I think, as a general rule, they should be discharged in the order above named.

His duties in the first regard, to respect the laws of the land and to aid in a general way in creating a wholesome public sentiment in favor of their observance and enforcement, does not differ from the duty which the well-being of society imposes upon all citizens alike.

In discharging his obligations to the Court, a lawyer should not lose sight of the fact that his office is to aid in the administration of justice, and not to retard and embarrass the Court by the use of means and methods commonly denominated "sharp practice." Let him once gain a reputation for employing improper methods for the purpose of influencing the court's ruling in his favor, or for the purpose of gaining a temporary advantage for his client, and his value as an aid to the Court is lost. He should employ such measures only as his judgment approves to be lawful and proper, and such only as he himself would tolerate and respect if he were on the bench.

In his manner before the Court he should always be courteous and respectful, and in the use of language he should be chaste, at least, if not gifted with elegance of speech; and thus assist the Court by his dignified example to command that measure of respect from the public, as well as from the bar, which is due to the Judge's exalted office. A judge may be lacking in ability, or in personal dignity, and it may be sometimes difficult to suppress a feeling of contempt for his rulings, nevertheless it should be remembered that Judges, though in general honest, yet like all other men they are fallible, and that it is the *office* and not the Judge alone that commands our respect.

In the conduct of his cases the lawyer should do all in his power to enlighten the Court upon the true state of facts, and the correct principles of law applicable to them. If he has properly prepared his case before coming into Court and has been correctly advised of the state of facts upon which his case rests, he knows more about it than anyone else, not even excepting his client. He is, consequently, in a position to aid the Court in arriving at a just conclusion. But it sometimes

happens that the work of the lawyer has only obscured the true principles involved and rendered more arduous the labors of the Court.

It is not contended that his duty requires of him that he should produce authority against his own contention, that is the duty of opposing counsel, and he may generally anticipate that his antagonist will faithfully attend to that part of the business.

He ought also, if possible, to persuade himself to believe that his client's contention is just, in order that he might with better zeal represent him. This is not always possible, because the client selects his attorney, and the attorney cannot always select his case. Furthermore the client sometimes wilfully misstates his case to his attorney, or carefully withholds from him facts material to a correct understanding of it, and it sometimes happens that he is surprised at the trial by the development of a very different state of affairs from those previously assumed by him to be true, and the false attitude of his client is revealed with unmistakable certainty.

This brings me to the consideration of the third, or last duty of the lawyer. That is his obligation to his client.

It is not expected that in an address of this nature I should make an elaborate discussion of this subject, a knowledge of which is of such primary importance to every lawyer. I shall therefore content myself with a few general observations.

The lawyer's duty to his client must be determined by the law, and by his own conscience, where the law leaves him in doubt. But we hear it sometimes said that a lawyer has no conscience. If by this expression it is meant that the lawyer is devoid of convictions, and has no decided personal opinions concerning what is morally right or wrong, it is a slander upon one of the most ancient and honorable of professions. But, if it is meant only to convey the idea that an attorney can represent his client with an apparent conviction that his cause is just, when to an impartial observer it might plainly appear otherwise, it is in a sense true. For he is bound by a faithful observance of his duty to his client to make use of all the means and opportunities afforded by the law for the prosecution, or for

the defense, of his client's case. He must be obedient to the principles of law and the rules of procedure, which the law itself prescribes, rather than be governed in his conduct toward his client by his own personal convictions. He should remember that he is the Court's officer, and the representative in Court of another, technically called his client. Consequently, whatever the law authorizes, and his client wishes done, it is the duty of the attorney to do for him. If the violation of a moral principle is involved in the doing of it, the infraction should be chargeable to the account of the client, and to the imperfections of the law, and not against the lawyer whose duty, in this regard at least, supercedes his discretion. Thus it is that the discharge of his duty may require an attorney to do for his client what he would not do for himself, if he were litigant. Take this familiar illustration: A lawyer is called upon to defend an action of debt, and after hearing his client's statement he realizes instantly that the obligation on his client to pay the debt is a just one, and that the only defenses to the action are the pleas of usury and the statute of limitations; is it not clearly his duty to advise his client of these defenses and then let his client determine whether he will avail himself of them? Yet, whose moral sense is so obtuse as to believe that either of the defenses would discharge a just obligation?

A lawyer's own convictions of what is morally right or just in a given case are as liable to be erroneous as are those of other men; nor are his convictions essential to a correct determination of the question at issue, hence he should studiously avoid, if possible, trying to impress either a Court or jury with his own personal convictions of the truth or falsity of facts to be determined, but he should confine himself to argument and demonstration based upon the evidence furnished by the record, or established by witnesses.

It sometimes happens in the experience of a lawyer that he loses a case that he had confidently hoped to win, and gains a case that he had entertained little hope of winning. These are some of the incidents of the profession, and should not disturb a lawyer's confidence in the integrity of the Courts. Because, rarely, if ever, can he be morally certain that the

verdict of a jury or the judgment of the Court is absolutely correct in any given case. Still it must be admitted that he is more liable to be convinced of the correctness of the decision if it happens to be in favor of his own contention.

Having once engaged in a cause for his client, it is a lawyer's duty to represent him faithfully until the cause is determined by the Court unless he is convinced that his client has wilfully misrepresented his case and grossly deceived him. And even then, I much doubt if he should jeopardize his client's case by retiring from it. If, however, he could retire from such a case without injury to his client, I should think it his duty to do so.

The relation of attorney and client does not affect the freedom of a lawyer's conscience to act upon his personal responsibility in matters involving questions of morality. Thus it is, that a lawyer may defend a client indicted for a crime and may even succeed in having him acquitted, and at the same time entertain little doubt as to his guilt.

But suppose he is convicted, and he appeals to the lawyer to apply to the Governor for a pardon; what is then the lawyer's duty? Should he sign his application for pardon in spite of his belief in the guilt of his client? If the relation of client and attorney ceases when the case has been disposed of by the Court and has passed beyond judicial control, is he not then left as free as any other citizen to exercise a discretion according to his convictions? If the above proposition is true, that a lawyer owes his first and highest duty to the State, it necessarily follows that he should be vested with a discretion, even though his acts might not appear to harmonize with his previous relation.

It may be truly said of the lawyer, that "in his time he plays many parts;" and yet, all the time he is consistent. The point is well illustrated by the following occurrence. Governor Stanley of Kansas, while a practicing lawyer, defended a man who was convicted of the crime of murder. He then wrote a strong letter to the Governor endorsing his application for pardon. But before the application was passed upon, Stanley himself became Governor, and the application for his former

client's pardon, together with his own letter endorsing it, were laid before him. He refuses, however, to grant the pardon, saying, that as Governor it is now his right and duty to view the matter "in an entirely different light." The question is, did not this right and duty accrue to him before he wrote the letter? How can he excuse himself for trying to influence another Governor to do an act which he, as Governor, now refuses to do? Does not his duty as Governor differ from that of his duty as citizen in degree, rather than in kind?

Again, and in conclusion, it is the duty of the lawyer to discourage the bringing of suits in all cases where he is satisfied the state of facts as given him by his client will not justify them. Your advice may not accord with your client's wish, and he may seek other counsel and obtain advice more in accordance with his wish, and he may even bring his suit against your advice; but his failure to win his cause in the Court will vindicate your judgment, and establish his confidence in the rectitude of your intentions.

# SHALL THE STATE HAVE A NEW CONSTITUTION.

By C. C. Higginbotham, Esq.

*Mr. President and Members of the State Bar Association:*

The Constitution of the United States has stood for over a century, with but few amendments. It is as vital to-day as it was on the day it was written. During that time almost every clause has been construed by the Courts. Thus it is clearly understood by the profession.

The first Constitution of Virginia was made on the 29th day of June, 1776. This Constitution remained in full force until the 15th day of January, 1830, when she made a new Constitution. This remained in force until January, 1852, when she made another Constitution.

West Virginia, becoming a State, made her first Constitution in 1863. In 1872 she made a new Constitution, which has remained in force until this day. This Constitution and the amendments thereto have been construed by the Courts until we know the meaning thereof. To show how difficult it is to construe a constitution we will look at section 13 of Article III., which is as follows: "In suits at Common Law, where the value in controversy exceeds $20, exclusive of interest and costs, the right of trial by jury, if required by either party, shall be preserved; and in such suit before a justice, a jury may consist of six persons. No fact tried by a jury shall be otherwise re-examined in any case, than according to the rules of Common Law." This clause, for the first time, came before the Supreme Court of Appeals in Barlow *v.* Daniels & Co., 25 W. Va. 512. In that case the Court held that, "No fact tried by a jury shall be otherwise re-examined, in any case, than according to the rules of the Common Law, applies to cases tried by a jury of six before a justice; and prohibits the re-trial

of such cases by the Circuit Court under provisions of Chapter 8, Acts of 1881." Under that decision all of the formalities and technicalities required to go by writ of error from the Circuit Court to the Supreme Court of Appeals, had to be used in order to get a case tried by a jury of six before a Justice of the Peace to the Circuit Court. Justices of the Peace did not, and do not, know the meaning of a bill of exceptions. This erroneous ruling was followed by the Supreme Court of Appeals in Hickman *v.* Railroad Co., 30 W. Va. 296, Vandervort *v.* Fouse, 30 W. Va. 326, and Fouse *v.* Vandervort, 30 W. Va. 327. However the Supreme Court of Appeals in Richmond *v.* Henderson, decided the 8th day of December, 1900, held that, an appeal lies from the judgment of a justice rendered upon the verdict of a jury, just as in cases tried by him without a jury, and overruled Barlow *v.* Daniels & Co., 25 W. Va. 512, Hickman *v.* Railroad Co. 30 W. Va. 296, Fouse *v.* Vandervort, 30 W. Va. 326 and Vandervort *v.* Fouse, 30 W. Va. 327." Thus, at last, we have the true construction of section 13, Article III. of the Constitution. And over a quarter of a century after the Constitution of 1872 went into force, the Court of Appeals was still construing it.

A new Constitution will require over a quarter of a century for the Courts to construe its new clauses. Thus the true construction for many years after its adoption, will be uncertain. There is nothing better for the people than that the law should be certain and thoroughly understood.

Under this Constitution the State has made great strides in prosperity. The people are satisfied. The true construction of the Constitution is known by the profession and the Courts. Some say that the Constitution goes too much into detail, but what assurance have we that a Constitutional Convention may not go even more into detail. Because the Constitution does go into detail, is that any sufficient reason why we should go to the enormous expense of a Constitutional Convention? Is it any reason why we should make the law uncertain for the next third of a century? The older a constitution, the more the people venerate and respect it. The Constitution of the United

States is hoary with age; and yet every schoolboy knows of it and speaks of it with the most profound respect.

SHOULD THE CONSTITUTION BE AMENDED?

First—Section 47, Article VI. of the Constitution provides that "No charter of incorporation shall be granted to any church, or religious denomination." This ought not to be changed. Churches and religious denominations should not be incorporated. The reason why is as strong to-day as it was hundreds of years ago. I cannot do better on this subject than quote what Tucker, P. said in Gallego Ex'ors *v.* Atty. Gen'l., 3d Leigh 477: "No man at all acquainted with the course of legislation in Virginia, can doubt, for a moment, the decided hostility of the legislative power to religious incorporations. Its jealousy of the possible interference of religious establishments in matters of government, if they were permitted to accumulate large possessions, as the Church has been prone to do elsewhere, is doubtless at the bottom of this feeling. The Legislature knows, as was remarked by the counsel, that wealth is power. Hence, the provision in the Bill of Rights; hence, the solemn protest of the act on the subject of religious freedom; hence, too, in part, the law for the sale of the glebe lands; hence, the tenacity with which the applications for permission to take property in a corporate character (even the necessary ground for churches and graveyards) have been refused. The Legislature seems to have been fearful, that the grant of any privilege, however trivial, might serve but as an entering wedge to greater demands. The history of ages had attested the proneness of such establishments to vast accumulations of property, and the statute book of England is loaded with statutes of mortmain, which were rendered necessary by the rapacity of the clergy. So long as there have been church establishments, with power to receive and accumulate property, so long has the tendency to such accumulations been manifested distinctly. The vast domains of the clergy acquired by the Catholic establishment of France, are known to us all. From this fatal source, among others, sprung a revolution, which deluged the fairest country in Europe in blood, and in its horrible progress spread desolation over adjoining states, and shook the civilized world to its

centre. And in Protestant England, fenced around as it has been with mortmain acts, we see a church establishment possessed of overgrown wealth and power. With these examples before our eyes, it is not wonderful that our statesmen have been cautious. They have been wise in their caution. The evil has not sprung from particular creeds, or the peculiarities of a confession of faith. It grows out of the very nature of the thing. The Church, if made capable to take, while continually acquiring from the liberality of the pious, or the fears of the timid, or the credulity of the ignorant, never can part with anything. The natural cupidity of the human heart is watched by the devotee himself, with the less jealousy in his pursuit after acquisition for the Church, since he believes it to be purified from the dross of selfishness and sanctified by the holy object of his ambition. Thus it is, that however humble in its beginning, accumulation is the natural result of the power vested in any religious society to acquire property. The same influence which enables it to gain from the State its first insignificant privileges, will secure to it from time to time, new, though apparently inconsiderable accessions, until, at last, the power will be acquired which legislative jealousy apprehends. The power to take and accumulate, alone, is necessary. All time has shown that the influence of feelings of devotion will do the rest. I speak of those feelings which exist without any undue influence from the pastor of the society. But if we go farther and suppose it possible that those abuses, which once had existed, may exist again, the progress will be more rapid, though not more certain. 'What (says the accomplished Sir Samuel Romley) is the authority of a guardian, or even of a parent, compared with the power of religious impression under the ascendency of a spiritual adviser, with such an engine to work upon the passions; to inspire (as the object may be best promoted) despair or confidence, to alarm the conscience by the horrors of eternal misery, or support the drooping spirits by unfolding the prospect of happiness which is never to end.' Such, I conceive, are the general grounds upon which rests legislative policy, in relation to the power of acquiring and holding property by religious societies." So much for what Judge Tucker says. I think his reasoning conclusive on the subject.

Second—A resolution of the House proposes to amend the Constitution prohibiting State officers from receiving any fees, in addition to their fixed salaries. Section 38 of Article VI. of the Constitution provides, "Nor shall the salary of any public officer be increased or diminished during his term of office." The Legislature has full power to do all proposed by the amendment, and have the law to go into effect upon the election of new officers. Such an act will not increase or diminish the salary of any public officer during his term of office. This being the case, it is not necessary to go to the expense of amending the Constitution.

Third—A resolution of the House proposes an amendment, to make the office of Secretary of State elective. The Secretary of State has always discharged his duties properly. Why should we go to the expense of amending the Constitution simply to make the office elective? Usually good men have been appointed to the office. Why not let well enough alone?

Fourth—A resolution of the House proposes to amend the Constitution, for the election of a county treasurer. There is no necessity for any such officer. It will add a new officer in every county in the State, who will have to be paid. The business is carried on as safe and well, as if each county had such treasurer. The people are already burdened with taxation. Why increase it for a wholly unnecessary office?

Fifth—A resolution of the House proposes to amend the Constitution, so as to pay salaries to all county officers instead of fees. This the Legislature is competent to do and put their law in effect on the election of new officers. This is better than going to the expense of amending the Constitution.

Sixth—It is even proposed to amend the Constitution and make the Judges of the Supreme Court of Appeals three instead of four. The Court of Appeals is overworked. This has been caused not only by increase of litigation, but also, because on the law side, cases go to the Court of Appeals on the evidence and not on the facts. The frequent special terms held by the Supreme Court of Appeals conclusively show that the four Judges of that Court are overburdened. Instead of decreasing

the number to three, their number should be increased to five, at least. Then divided Courts will be rare.

Seventh—It is also proposed to amend section 12 of Article IV. of the Constitution. It is as follows: "No citizen shall ever be denied or refused the right or privilege of voting at an election, because his name is not, or has not been registered or listed as a qualified voter." The amendment proposes to require all voters to be registered before an election, and to allow none to vote who have not been so registered. This may be necessary in the large cities and the counties in the southeastern part of the State bordering on Virginia, but the other counties in the State need no registration law. In fact it would be obnoxious to them. It is to the best interests of the State that, all voters vote at an election. You know how difficult it is to get all voters to the polls on election day. Many qualified voters will neglect to be registered. Instead of bringing out the whole vote it will bring out many less. So if the cities and those counties mentioned, can possibly do without a registration law, it will be better not to propose such an amendment.

Eighth—A House Journal resolution proposes the following amendment to the Constitution: "The State of West Virginia shall never pay or assume to pay any part of of what is known as the Virginia State Debt." It is a rule of law, when a State owes a debt and is divided, each section is liable for its equitable part of said debt. Section 8, of Article VIII. of the Constitution of 1863 is as follows: "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, 1861, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." If that clause had not been inserted in the Constitution of 1863, West Virginia would not have become a State. The Constitution of 1872 leaves the whole matter with the Legislature. I do not believe that West Virginia owes but a very small part, if any part of the Virginia Debt. The proposed amendment is in bad faith, and is a direct attempt at repudiation, if the State owes any part of such debt.

## A PAPER BY JAS. F. BROWN, OF CHARLESTON.

### WEST VIRGINIA LAND TITLES.

That West Virginia land titles have become a reproach to the State, goes without saying.

Is the situation hopeless? If not, wherein is the remedy?

Upon these titles depend the homes of our people, around which clusters every tender tie—that for which the people devote their lives to the getting, and, for as long time as history has compassed, have laid down their lives willingly to protect; the idol and special care of the law that goeth back to the time when the memory of many runneth not to the contrary, perpetuated in the Magna Charta and the Constitution. Our Supreme Court, covering the subject recently, said:

"To secure the possession and enjoyment of private property is one of the chief ends of all free governments; and hence the limitation found in our National and State Constitutions to secure this object and the safeguard thus provided in the supreme law, may not be ligntly or recklessly invaded. To destroy or materially weaken its force, would be to subvert one of the pillars on which rests the fabric of our civil society. While cheerfully conceding that private interests must yield to the public exigencies, or the public good, in a proper case, yet that proper case must be clearly made to appear. Said a learned jurist of Virginia, Judge Green, in 6 Randolph: "Liberty itself consists essentially, as well in the security of private property, as of the persons of individuals; and this security of private property is one of the primary objects of civil government, which our ancestors in passing our Constitution intended to secure to themselves and their posterity, effectually and forever.

"An eminent statesman of England, referring to the security of the subject under the Aegis of English law, once

said: 'There stands the poor man's cottage; the rains of summer and the snows of winter may enter its crevices, but the King of England with all his forces, dare not enter that poor man's cottage.'"

The stability of the land titles of a nation involves the happiness and content of the citizen, the prosperity of the community, the strength of the State; no people so contented, independent and loyal, so ready to resist oppression at home or invasion from abroad, as those who own their homes and are guaranteed in fact as well as in word, the absolute right to them.

The importance of the subject admitted, let us consider, First, the present status of land titles in West Virginia; next, with view to rectify the evils which affect them, what brought about the present deplorable condition, and then, if possible, find a remedy.

The more thickly settled sections, thanks to the Statute of Limitations, to a degree are exempt from much of the harrassment and peril that afflict the greater area of the State. It is to the titles of the latter that I more particularly address myself. The ills are manifold, in part inherited from the mother State, more largely of our creation by acts of commission and omission.

In the early days of the old Commonwealth, the paramount policy was to be rid of non-revenue producing territory; to convert all holdings into subjects of taxation, it mattered not how nor with what result; the Eastern slope wanted money, the West was uninhabited, the people to suffer were unborn, and could not protest; wherefore, the great unknown "West of the Alleghanies" was put up, as it were, for a "raffle;" and, the land office established to issue "warrants" at two cents per acre to all comers *ad libitum* without regard to the State's acreage or to prior sales. Whoever would, could hand in his two cents and multiples thereof, and receive *carte blanche* to help himself accordingly; it mattered not to the revenue seeker, whether he lapped upon another or not; that was between the purchasers; as regards the revenue, it was thought all the better; for the Commonwealth, in such cases, got two sets of purchase money and two sets of taxes, sometimes three, and even in instances, four and five.

The "Land Office" was a bank of issue, without obligation to redeem. Its scrip passed by indorsement, and, in sections, became the currency of the country. The holders of these warrants could locate when and as they chose; but, at first, in pretence of decency, the locations, more commonly known as "entries," were required to be made with such certainty of description as to permit subsequent locators to avoid them, and to be entered upon the memo. kept in the office of the surveyor of the county in which the land appropriated lay. Whole warrants, or a dozen, or the fraction of a warrant could be used in a single entry, and if the locator tired of his selection, he could at pleasure lift his warrant and be free to re-locate elsewhere; no provision for noting such withdrawals was made, wherefore the entry book ceased to accomplish its purpose to advise subsequent locators, that is, if it ever met its purpose; for the definite description provided for by the Assembly soon degenerated into the stereotyped form: "———— acres to begin at the mouth of a 'holler' and to extend up and out for quantity,"—later upheld by the Courts, and, by "judicial amendment," incorporated into the statute.

The fathers of the system, in further effort at show of business-like methods, required the entry to be surveyed within a year, but this, too, was only a matter of form, as each succeeding Legislature extended the period to a day subsequent to the next session, when the process was repeated, so that, during all the period which grants by the State were permitted, there was scarcely an instance when the provision was operative. The survey made, the patents issued, upon presentation within six months, (subject to like extensions), and the Commonwealth granted the title upon a record made in the Land Office at Richmond, (not in the county); as well have been in London or Paris in those early days in point of travel, when it was all the settler's life was worth to traverse the Alleghanies and Blue Ridge, on foot, as must, for not even the bridle path then was known to the forest. The original scheme was, that he who first located, by his pre-emption, secured priority; and, so long as he kept within his period, had the better right; but, with a wisdom worthy of the jurists of that day, the Court of

Appeals early decided, that the *date* of the *grant,* the *last* step in the process, determined the right, though the earlier locator was in no default—though he had not exhausted his grace, nevertheless, the shrewd speculator of nimbler foot could forestall him.

To meet this emergency, provision was made, whereby the first pre-emptor, if he *knew* in time of the dodge, might, before the issue of the patent to the junior claimant, file his caveat and enjoin its issue; a scheme brilliant in its conception; of as much practical worth as right to enjoin a thief from carrying away his plunder, if caught before the act.

Next, followed the notorious inclusive grant, first authorized by the Act of 1788, repealed shortly thereafter. As the needs of revenue increased, sales to small settlers were found inadquate, wherefore, speculators from the East were invited to the lottery, and, as further inducement, and to save cost of surveying out prior claims, were authorized to include vast areas in single surveys, irrespective of earlier entries, surveys or grants, excluding from the purchase money paid, such estimate as they should make for prior claims, right to carry which into grant, the law reserved. The result was as might easily have been foreseen. Within the short space of fourteen years, nearly every acre of the Commonwealth's lands, theretofore disposed of, and then on hand, was covered with blanket surveys in the hands of the ubiquitious "land grabber" and withdrawn from reach of *bona fide* settlers; a condition that, in effect, must have either maintained the "West of the Alleghanies" a perpetual wilderness, or involved a citizenship of tenants worse than that which scourges Ireland. But these speculators had no notion of developing the lands, even by tenants; they sought only for a subject matter for speculation, a something which, by its magnitude, could be floated in foreign markets and used, by means of glowing prospectuses, to gull the gullibles of the Old World. One instance will suffice to illustrate: The notorious James Swann, alone, held upwards of 2,400,000 acres, which he negotiated in Europe to:

"His Serene Highness the reigning Prince of Freistenberg de Helenginberg, &c., &c. His Excellency Count George Fred-

erick de Waldeck Pyrmont Gaildoff Limpberg, &c., &c., Barons Charles and Ernest de Galenengen Berneck, Count Jean Segmand Ehrenreigh of Redern, Francis M. Waldermann, Henry Le Mercier Lewis Philibert Aubignose, Christian Frederick Albert Schott, John Matten Guntling, Francis Joseph Perrot, Charles William Juste Jerome, Baron Nicholas Massias" and others.

Col. Swann, with such holdings, commanded, as shown, respect of crowned heads, and became a veritable prince in Paris, his credit and his extravagance, and his debts are matters of history, and while he died in prison for debt, it is said, that in consequence of a then existing law in France that the creditors incarcerating a debtor must maintain him according to his previous mode of living, lived still, and died, though in prison, in luxury.

But to return to the subject. The State's lands thus exhausted, and with it, her revenue from sales; nothing yielded by taxation, for these speculators, after playing their cards, so, threw away the deck, abandoned the land; plans were considered for the remedy of the evil; the "inclusive grant" act was repealed, and forfeitures devised to restore to the State the ownership of the soil.

In 1814 the earlier forfeiting acts were revised and crystalized into a system looking to the collection of delinquent taxes. But before many years a worse result than loss of revenue, became apparent, as the fruit of the original system. As *bona fide* settlers improved the lands and gave to them value from time to time, the old abandoned patents were dug up, and either held *in terrorem* over the hardy pioneers and used as means of extracting tribute, or else, to drive them, their wives and children, as trespassers from the homes which their grandfathers had hewed out of the forest. The extent of the evil may be appreciated when I tell you that in a single Court in this State there are suits now pending after the lapse of a hundred years, aggregating in litigation upwards of a million acres; in some instances, more than 100,000 acres and more than 400 defendants, to a single suit.

As the situation began, with the settlement of the country,

to manifest itself, able statesmen grappled with the problem and the series of acts beginning in 1831 was enacted, each an experiment, evolved from experience under its predecessor, culminating in the Act of 1852, afterwards repealed, but which the new State, with the vigor of its youth, re-enacted in 1868, and in 1872 made fast in the Constitution. This system, in its conception, was a marvel of statesmanship; in its application by the courts, a dismal disappointment.

Under that just and equitable principle that the right of property is subject to the paramount right in the State to service and support; that, he who would share in the benefits of government and its protection, must, according to his means, contribute to its burthens, this system provided, that such as should persistently refuse to contribute to the common fund for common protection, should forfeit his holdings, as the tenant who persistently refused to pay his rent, forfeited his leasehold; and, as incident, further provided for the elimination of the old defunct surveys that spread over the country like vampires with wings outstretched, throwing gloom over whole communities, sapping the energies of the people; menacing their homes, depressing their hopes, discouraging improvements, even to the building of better houses, the planting of a tree, or mending a fence pending the old suit, half a century old.

As shown, the first step of the process under the new law was to punish the guilty, the delinquent; next, to rid the community of the nuisance, the dead carcasses of forfeited titles, and, having so meted out justice and applied the knife, do further justice by disposing of same, as reward, to those who had borne the burthens under pledge of title no less solemn, under patents issued under the same seal, upon payment of an equitable price,—who had felled the forest and brought peace and plenty to the wilderness. As matter of "favor," in point of law; as matter of common justice as matter of fact, this provision vested the forfeited title in the junior patentees, as the common law vested the after acquired title of the warrantor in his vendee, upon ground that it would be inequitable,—that it would outrage conscience, to permit one to grant a title and receive the price under representation of ownership, and then

impeach it and get back the land, upon plea that he sold what he then had not, but later acquired.

The purpose was, to first gather in such titles and eliminate them then to confirm all junior grants by vesting title to so much of the territory as was thus acquired, in the *bona fide* occupants to the extent they had paid taxes; then to sell the *residue, i. e.,* so much and so much only "as the *title* thereto remained in the State," the title to this "residue" to be passed through a crucible, purged of its infirmities, then re-issued like a new coin, a perfect title, dating from the re-issue, without a past, direct from the State the source of all title.

Had the provision stopped here, it had been better, but with a liberality greater than wise, it went further and permitted the culprit who had dodged his taxes until caught, to come in and, by returning, as it were, the stolen goods, have back as a matter of grace and favor such title as ought to have been sold for the State's sole use. But, grant to the former owner all that can be made of the provision, still its chief purpose can be accomplished if its intent be observed; the redemption limited to the *residue* in the State, and the former owner compelled to pass it through the same crucible as in case of sale; compelled to give location as certain as should have been in the first instance; location, not to the original tract, but to the "residue," by excluding every adverse claim not under default, permitting every one whom he may have inadvertently or otherwise included, to come into court and show his want of right;—to file a caveat, as it were, against this re-issue of the old grant, for lands, as to which, the State's title being divested by law and vested in him, the State had no title to the re-issue;—to prevent and enjoin this re-granting according to the delinquent's own pretension, to cloud the title of the true owner and found a claim whereupon to drag him into distant courts to be harrassed into compromise; or driven, for want of means to meet protracted and expensive litigation, into an an abandonment of his right and property. Experience has taught such to be the rule, not the exception.

The Legislature of 1893, like many former Legislatures in less degree, did its duty well, rose to the occasion, and met the

emergency; enacted that which the Constitution contemplated and provided for and in such manner that this wise and beneficent provision could not be robbed of its legitimate fruits if the Courts would, as we believe they will, rise also above that sickly sentimentality that sees but an outlaw in the junior claimant or the tax purchaser from the State. If there was ever a statute which should be taken by its four corners and construed, according, not only to its plain words, but manifest and unmistakably true intent, it is the statute of 1893, giving effect to this provision of the Constitution. It is hoped that the present Court will not, as some of its predecessors have done, flinch when brought to the test.

The "old patents" constitute the contribution of the General Assembly of Old Virginia to the present contribution of our titles. Her Court of Appeals was not backward in lending a hand; for the old courts, like their successors, seem not infrequently to have felt it necessary in order to maintain their importance and make felt their superiority over the co-ordinate legislative department, to thwart the wise action of the latter under color of construction; repealing its acts, and in lieu, making new laws of their own. A few instances have been already adverted to.

The contributions in our own State to the confusion, have been chiefly through the courts, who, in following the example of their predecessors, have out-distanced them many times.

Aside from the evils, outgrowth of the early method of granting titles, may be instanced many others scarce less vicious, from time to time added, largely the result of well intended but ill advised judicial legislation.

Chief among them, the uncertainty introduced, through discordant decisions having the force of law:

The system of lax sales in vogue, as applied by the Courts;

The law of acknowledgments, as construed by the Courts;

The doctrine of "constructive notice" not by the record, abrogated by the Legislature, but nevertheless, perpetuated and enforced by the Courts;

The want of restriction, upon some features of the statute of limitations, which the Courts should have imposed; and, the

too great restrictions upon other features, imposed by the Courts

The limitations put by the courts upon the statute relating to *lis pendens;*

And, the failure of the Legislature to enact laws to effectuate the intent of the existing statutes, by making titles in fact, a matter of record, and providing a way in which it may be so.

Time prevents full discussion of the cases decided in West Virginia wherein the Courts have outdone themselves in their efforts to thwart the legislative will, and to multiply confusion among titles.

It was once said, by an eminent jurist upon the West Virginia bench, that when a question was decided *three times* by an appelate court, one way, the doctrine of *stare decisis* was conclusive even upon the court of last resort. It had been wiser had the conclusion been that a single decision of the Supreme Court bound it, especially upon rules affecting title to property and the validity of deeds, inasmuch as, by the Constitution, inferior courts are bound by those decisions, the bar of the State bound, in advising clients, to treat them as the law; and the people at large to accept the enunciations of that august body as such; but unfortunately, the doctrine of *stare decisis* seems to have become obsolete of later years.

Illustrations fill the Reports; in fact, the especial pride of some Judges seems to have been to reverse precedents. One, vital upon questions of title, is found in the case of *Stockton v. Morris,* decided in 1894, overruling the case of *Hopkins v. Ward,* 6 unf. 38, decided in 1817. The Court in the older case, recognizing the evils of the inclusive grants but further recognizing that property rights had been acquired under them wherefore it was too late to abrogate them, with view to minimizing the evil, and in accord with two other of the three States adopting like systems, held; that when the claimant under such a grant put in evidence his patent and located its exterior bounds, he made a *prima facie* case, and thereby cast the burden of proof upon the defendant to show himself within some parcel, the right whereto was reserved to exclude it from the grant. This decision remained the rule of property in such cases, and

the bar of the State, upon strength of it, advised, and the people acted, for more than seventy-five years. It remained for the Supreme Court of Appeals of West Virginia in 1894 to uproot the titles to nearly half the lands in the southern part of the State by overruling the decision, contemporary with the act; and holding, that to recover, as claimant of ever so small a portion of any one of these huge grants, the plaintiff must, as condition precedent, *locate* every acre of general as well as specific reservations from the whole grant; an absolute impossibility, in the majority of cases, as the reservations were but rough estimates by careless and irresponsible surveyors, wherefore, no location ever existed for part of the acres so reserved.

To illustrate: In Putnam and Jackson counties lay, adjoining, two surveys of 100,000 acres each, made at the same time and for the same person. An older survey, of 2,000 acres, lay within the bounds of one, but by mistake was reserved from the other, wherefore, the 2,000 acres so reserved cannot be given location. Applying the new rule: if A. be sued on the east of the tract, he may defend for 2,000 acres there, and defy recovery, because the plaintiff can not show the 2,000 acres so claimed by him *not* to be that reserved from the survey; so, B., when sued upon a claim on the west; and C., on the south; and so on, until the whole title to the 100,000 acre tract is exhausted by such an insignificant reservation; so, in any case, where the surveyor's estimate exceeded the actual aggregate of prior claims.

Like ground for complaint exists against the courts, in the case of tax sales. The Legislature, with a patience and persistence worthy of commendation, have, session after session, sought to keep faith with those whose aid it sought and received in collecting its revenues; nevertheless, the courts, with a fine spun sophistry which reflects more credit upon their ingenuity than upon their inclination to construe the law according to the plain intent of the law makers, have systematically abrogated their enactments. The cases in the old State and in the new are so numerous and so familiar to all present that it would be a waste of time to enumerate them. But reference to one may be pardoned by way of illustration: See 24 W. Va., p. 174, the case of *McCallister v. Cottrille;* wherein it was held; that the

statute providing tax deeds should not be disturbed by the courts—

"Unless such irregularity appear upon the face of the proceedings of record in the office of the Clerk of the County Court, and be such as materially to prejudice the right of the owner whose real estate is sold, *and it be clearly proven* to the Court or jury that such dilligence has been exercised by the party in whose name it was sold, that but for such irregularity the said party would have redeemed the same under the provisions of the fifteenth and sixteenth sections of said chapter, does not authorize the introduction of *parol testimony* to affect the validity or invalidity of the deed. But the legal construction and effect of said provision is, to declare that the Court or *jury* shall determine, from the proceedings of record on which the deed is founded, and from the face of the deed itself, whether or not any such irregularity appears thereon, &c. And if said irregularity then appears, it must be *conclusively presumed* that the owner was thereby prejudiced" (that he would have, "in fact, redeemed, but for such irregularity,) "and such deed must be held and declared void".—

The fact is, that, as result of such extreme effort on the part of the Courts to abrogate plain statutes, every lawyer is compelled to condemn, in advance, any title in which a link is a tax deed; whether he can detect a flaw or not;—he does not dare to apply to such statute his common sense, or, any rule of construction he ever learned. When called to advise, his invariable answer, if he is wise, must be: "Being a tax title, the Court will find a way to defeat it."

The only known case, (or nearly that), of the maintenance of a tax title in West Virginia, was not even permitted to appear in the books. In 1868, or thereabouts, one Charity Vance, owning a tract of about 3,000 acres, gave upon *one undivided half* of it, a deed of trust to secure a debt; theretofore the whole tract had been sold for taxes, and bought in by one W. R. Cox, and a tax deed obtained. Mrs. Vance sought to annul the deed for defects apparent; the lower Court set it aside. On appeal, strange to say, the Supreme Court reversed the decree, and sustained the deed. The trustee was not a party.

The sequel is interesting: The trustee, later, brought suit to set aside the identical deed as to the *undivided half,* upon the identical record, (save as to parties); the Circuit Court, on strength of the previous decision by the Supreme Court, sustained the deed; on appeal, the Supreme Court held the deed *void;* and to escape the dilemma, the land was required to be divided *equally* between the vendee of the *tax purchaser* and the *trustee;*—the deed, good as to *one undivided half* of the land, and bad as to the other undivided half; and the first decision, though final, suppressed from the Reports. The *second* appeal is reported in 16 W. Va., *Burlew v. Quarrier,* p. 156. The files of the Court will fully verify the above statement in its detail.

Hastening from "tax deeds" to "acknowledgments": The latter subject furnishes instances of hair-splitting distinctions, impossible for the ordinary mind to follow; wherefore, no lawyer dare pronounce a title good, if, perchance, a married woman happens, somewhere, to figure in it; and no client knows, in such, how much to deduct from his estimate of fair value, to indemnify him against a possible suit and a possible adverse decision. When we compare the strict construction given in *Watson v. Michael,* 21 W. Va., 568, *Blair v. Sayre,* 29 W. Va., 615, with the loose one in *Bensimer v. Fell,* 35 W. Va., 15, and *Pickens v. Kinsley,* 29 W. Va., 1, how can one tell what to say to the buyers. Our Court has held a notary, in taking acknowledgments, to be a judicial officer exercising a judicial function, and his certificate to be the record of his judgment, but a tribunal of limited jurisdiction; and again, that judgments of courts of limited jurisdiction are *void* unless the jurisdiction appear upon their face.

In the case of the notary, the common law was reinforced by the statute; the form prescribed, in words, providing, that he should in his certificate certify that the act was performed "in his county." Held, nevertheless; an acknowledgment good, not so certified; and yet, that a certificate that the married woman was "examined privily and apart from her husband and had the writing fully *read* to her," was bad. And, that, "she acknowledged that she had willingly executed the same and did not wish to retract it" was also bad.

While I confess to a preference for the strict construction, for, if allowed, we may then know a deed to be good or otherwise—have something definite and fixed, something more certain than the accident as to whether a New Jersey or a Texas decision will first reach the hands of the Court,— still, I cannot refrain from an expression of regret that the land titles of the State must bear the opprobrium resulting from the dual system of construction.

Passing to "constructive notice, not of the record":

In the olden time when people could not read nor write, when lands lay "in livery of seizin" and not in grant, when the title passed by the delivery of the "twig" or "clod," the face of mother earth was the only record; and visible possession, *prima facie* that the possessor had right there, to be investigated.

As civilization advanced these primitive methods were outgrown and abandoned, and deeds substituted as conduit for titles; and records of their registry, for evidence thereof. By plain and unmistakable words, the statute required every contract for the sale of lands to be in writing, and, to pass the title, under solemn seal. And by further provision, that such writing should be void as to all subsequent purchasers without actual notice, and as to creditors, unless recorded. In intent and in effect, until amended by the courts, furnishing a place where intending purchasers must go, or take subject to its showing, and where they might go and be protected against all not shown, a system admirable in its purpose, convenient and safe, affording protection to the diligent, and stability to his title. He might refer to the record and might rely upon it.

But the courts have legislated out of existence both the "statute of frauds" and the "recording act"; perpetuating an incident to a system long ago abandoned; and, in the teeth of the substituted statute, they hold, that, though A. have a perfect title by the record and no scratch of the pen exist against it, nor knowledge of outstanding equity or of unrecorded deed, still, despite the express legislative enactments, only with a verbal contract or a pocket deed "B." shall prevail if, perchance, he can show act or thing that may be construed into possession of ever so small a part. For example: the extension from an adjoining

tract, of an half-acre clearing across an uncertain line would enable a claimant under verbal contract to defeat the title of the purchaser, who, with diligence had exhausted the record, and, upon the faith and credit of it, had parted with his money.

Or, a like result, if the first purchaser held a deed, and, withheld it from record. All, upon plea, that the possession was *constructive* notice of an adverse claim.

Even the creditor, as to whom no question of notice is involved, is made the victim of verbal sales; and, notwithstanding his grant of credit upon the faith of the title disclosed by the record, in the debtor, may be met, when he comes to enforce his judgment, with a contract, real or fictitious, that had never so much as had a scratch to support it. Were you ever called upon to certify a title, perfect on the record, that your hand did not tremble as you did so, when you thought of the possibilities in the belly of these decisions?

Next, the Statute of Limitations, the wisest of all statutes in its purpose, but imperfect in its original form, and worse distorted by the courts.

This act was never devised to enable people to steal lands, but to quiet titles; to perfect those, acquired in good faith, but found in some respect faulty. A title, to receive its aid, should be required to be *bona fide,* founded upon a writing of record, and accompanied by payment of taxes for the requisite period, in order that the better title might have means of knowing of the existence of the claim and the extent and duration of it; and, because he who is thus favored by the State and vested *gratis* with a title as reward for his improvement of the soil, should as well, maintain his claim by like discharges of the paramount duty of paying taxes.

The allowance of "claims of title," without writings; "and color of title" under "pocket deeds" and contracts, with both decisions and statutes to the effect, that the possession founded upon a turnip patch shall go to the extent of the boundaries hid in a concealed document, and that too, without payment of a cent of taxes, or even an entry upon the tax books, is simply monstrous;—an invitation too often accepted for the perpetration of frauds which, if applied to personal property, would

lodge the perpetrators in felons' cells. Beneficent in its intent, villainous in its operation; the courts, if ever justified in moulding a statute, might have been excused in lessening the evils inherent in this statute by wise construction; but, instead, they have held, that the greater the wrong intended, the better the color of title.

On the other hand, by construction, the courts have, with nice distinctions, so amended the statute as in large degree to deprive the meritorious of its intended benefits. This provision of the law was especially intended to save the homes of the woodsmen and pioneers who bought, and paid for, land of the Commonwealth, proceeded in good faith to its improvement, and, afterwards, were surprised by some older underlying grant; and yet, one learned court in West Virginia has in substance held, that, to constitute "possession," the enclosure must be surrounded by a fence "horse high, bull strong and pig tight;" that, a log or brush fence, such as the pioneer class alone knew of or used, is wholly insufficient to constitute the leaven that leaveneth the whole lump; and, another learned court in the State, in a recent case, held, that a "lean-to" was not a residence of sufficient pretention to support the defense of adverse possession.

Next, the doctrine of "lis pendens";—the constructive notice which affects without knowledge, or notice by the record, of the county court clerk's office, the center where all matters affecting titles should be collated; especially affecting suits to impeach conveyances, to declare trusts, real actions, and the like.

The Legislature attempted in a lame way to meet the evil, but the attempt has been shorn of its worth by the courts in holding that the doctrine of constructive notice of the pendency of a suit is still to be applied irrespective of the statute.

In this connection may be also considered the statutory provision which permits judgments, docketed within sixty days, to relate back to the first day of the term. A judgment, recorded in McDowell, may intercept a title in Wood, though not docketed in the latter county for a month or more after a *bona fide* sale and conveyance of title perfect by the record of the county in which the land lay; and that, too, though actually in the occupancy of the vendor at the date of the sale. And worse,

judgments of the Federal courts; which operate as liens over the whole State and need never be docketed at all.

A few of the difficulties that confront the investor in West Virginia lands have been imperfectly presented. The herculean task that confronts the lawyer, when called upon to examine and certify a West Virginia land title, is almost appalling, when it is considered, in connection with the foregoing, the difficulties growing out of changes in title by descent, without record of the heirship; by will, when devises are to children without naming them; grants by married women, under their new names; of titles acquired in their maiden names;—all too familiar to need much more than mention. When titles were young, and a lifetime would span the period from the inception of the grant to the date of the examination, parol proof of marriages, births and deaths was possible; but as generations passed, the difficulty has grown, until now, in many instances, the facts are absolutely unascertainable, and in a much larger number of cases, impossible of proof; every year increases the difficulty.

But time does not permit an exhaustive discussion of all the ills that our land titles are "heir to."

As to the remedy:

It may not be possible to remove scars, but it may be, to heal some of the sores, by legislation; and to a degree prevent the spread of the trouble.

The following suggestions are submitted for consideration:

1st. An amendment to the Constitution requiring the courts to construe statutes according to their plain intent, rather than, as some court of some other State has construed some foreign statute more or less dissimilar. And, further provision, that the doctrine of *stare decisis* shall govern the Appellate Court as well as the inferior ones upon all questions once decided by it, at least as to transactions subsequent in date, affecting titles; leaving it to the legislature to correct, by prospective legislation, any possible mistakes the court may make. By such provision, giving to the bar safety in advising in accord with opinions rendered; and to the people, security in shaping their transactions accordingly.

2nd. A reinforcement of the forfeiting acts, whereby by

degrees the old ghosts of titles, which are so constantly sought to be revived to menace the occupants, may be absolutely eliminated; and whereby, before being turned loose again upon the public, whether by sale or redemption, they shall be clipped to their proper dimensions; given form, and re-launched as new titles, as of the new date, with boundaries as then fixed and determined by actual survey. The expense may be considerable; but, in case of redemption, will fall upon those who take by "grace and favor" and ought not to complain that the gift is encumbered with a burthen for the public good. In case of sale, the increased cost is met by the increased value of the "perfect title," presented for sale.

3d. In aid of the above act; provide, that tax sales to the State, shall stand; and not, as now, be affected with all the infirmities which the courts have fastened on sales to individuals.

4th. Provide, that tax sales to individuals, shall stand. If need be, bar an attack, in a nominal time, and require notice of the pendency of the suit, with copy of the decree when rendered, to be recorded in the county court clerk's office, with proper index.

5th. Require, notice of *lis pendens* to be so recorded, in all other suits, at law and in equity, as to which the doctrine of "lis pendens" applies; and make provision, that the result of every such suit or action shall at the termination of the suit be in like manner recorded, and all properly indexed.

6th. Require, all deeds to be recorded within a limited time, upon penalty of absolute nullification for all purposes. For, laws without adequate penalties are but snares.

7th. Require, that in every case of inheritance, an affidavit be, within a stated time, filed and recorded in said office, showing the name, age and late residence of the decedent, and the names and residence of the heirs; all, to be indexed in the name of the decedent as grantor, and, the heirs as grantees; and all, within a stated time, upon penalty of forfeiture of the property to the State. Such record, to be *prima facie* evidence, in every case; and, *conclusive* in favor of all innocent persons dealing with the property before suit to amend or correct the record.

8th. A like provision, for devises, when the names of the legatees are not set out in the will. And, in all cases of wills, a like index in the name of the testator as grantor, and, of the devises as grantees.

9th. That, every married woman, owning real estate, shall, upon like penalty, cause to be recorded a certificate of the fact of her marriage, and of her husband's name; to be indexed in her maiden name as grantor and in her married name as grantee.

10th. To limit, the statute of limitations, to cases of color of title under writings, recorded, and defining the boundaries claimed; coupled with payment of taxes, according to the claim, for the requisite ten years. And, to define, "possession," to be actual occupation, by residence of self or tenant, within the interlock?;—at any rate, *define* it.

11th. Make, all liens, by judgment or otherwise, date as of the actual docketing in the county wherein the land lay. And provide, for docketing of judgments of the Federal Court; and thereby, make them as good as, and no better, by way of lien, than judgments of State Courts.

12th. Provide, that there shall be no "constructive notice" save and except that furnished by the record; and, that the statute of frauds shall be given effect, as well, by courts of equity, as by courts of law.

13th. Provide, that acknowledgments shall conform to the statutory form; or else, in plain language, say, what is requisite, and, what it is not.

14th. Pass such curative act as will cover all irregularities, in the past; and, provide for ample notice of the new provisions; that all may, as far as possible, start with clean titles, and thenceforth, be compelled to keep them so.

As to remedies, for recovery of lands; and the practice in relation to same, much might also be said, and much done to simplify same, and to the better protect the people in their titles.

For example; a statute forbidding joint actions in ejectment against disconnected claims, and unconnected claimants;

One, excepting judgments in ejectment, from the statute of limitations;

One, widening the door of evidence, as to ancient lines and corners;

But, want of time forbids the enumeration of the hundredth part of what should be done in this regard.

Not only the labor, of the lawyer, in the investigation, but his risk, in certifying titles, in this State, under present conditions, to say nothing of the risk to the purchaser, are such as to make the subject, one of interest to every lawyer.

If the scattered suggestions here made, should set the members of the bar, to thinking, I have full faith in their ability to evolve a system, that will, at least, ameliorate present conditions; and if so, I will feel that this paper has not been entirely in vain.

# JOHN MARSHALL HAGANS.

By Hon. Okey Johnson.

*To the West Virginia Bar Association*:

There is one time and place when the christian, the pagan and the infidel alike feel their utter helplessness. That is when the breath leaves the body and they stand in the presence of death. They may alike call to the loved one and the cry fall on listless ears. They may alike resort to all the arts known to the healer and still the object of their affections is dead. What is death? All agree that it is that which removes the victim from our presence and leaves us to mourn and cry without help, and all we can do will never in the world restore the lost one to our homes again, and we continually

"Long for the touch of a vanished hand
And the sound of a voice that is still."

Death is separation. To the unbeliever it is final and eternal separation. To the christian it is separation, but a brief one. He looks not upon his friends or relatives as lost, but as gone before, leaving the blessed immortal hope to them amid the gloom, that in a fairer, brighter clime, he will meet the loved one and enjoy his society forever. This the only power on earth that can lessen the sorrow when we stand in the presence of death. Faith is the only solace to ease the aching heart wounded by the death of those we love.

Not long ago our friend Judge Hagans was with us. We enjoyed his society. His genial smile cheered us. His silvery voice was music in our ears. But for several months we have not seen him. It is as if he had gone on a journey, and he has. He will never return to us. "He has gone to that mysterious bourne whence no traveller returns." We miss him at his home, on the street, and in the court house; every where we go we

miss him. We shall never more see him here, but faith whispers, wait, "you shall meet him where he has joined the 'silent majority.'" But Judge Hagans' death has not robbed his relatives and friends of everything. He has left with them a precious memory. He has left an influence that can not die. Do we ever think of the influence of the dead? That the dead have more influence than the living? Let us go to Westminster Abbey and contemplate England's mighty dead, and ask ourselves what made the civilization of that great kingdom: and from those vaulted sepulchres comes the answer, "the influence of the dead who rest here." Go to Mt. Auburn, where reposes the dust of Longfellow, Story, Lowell, and a host of others, and ask what made Massachusetts the leader in the greatest civilization of the West, and the answer is "the influence of her dead who repose here" and elsewhere in that great State. The mighty dead of Virginia were leaders in the great battle for human liberty, and their influence and that of others whose dust is deposited all over this great country, must keep burning the fires of human liberty. The earnest voice in favor of human liberty comes from Mount Vernon, Monticello, Montpelier, Hollywood and a thousand other sepulchres of our great dead scattered all over this great country. The influence of a man or woman upon the country is in proportion to the prominence which they attained. The influence of these obscure great spirits, who seem to shed a light in a narrow radius, is not to be despised. Many a humble one who performed well their part has shown his or her power through the influence in the home they have exerted upon others. Many of the great of earth have attributed their positions to the quiet, silent influence of a good mother.

The subject of this memorial occupied many high positions, and exerted a wide influence, an influence that will live. Judge Hagans was born on the 13th of August, 1838, at Brandonville, Preston county, Virginia, now West Virginia. His paternal ancestors were from New England; his maternal ancestors were of Scotch descent. A commingling of blood that might well produce a stalwart man. He was educated at Monongalia Academy which was subsequently merged into the West Virginia University. That old Academy was a school like Rugby, and it

had Prof. Moore, something like the Arnold of Rugby. From this noted school many men of influence have come. He studied law with the Hon. Waitman T. Willey, and afterwards further pursued his legal studies in the Law School of Harvard University. He was licensed and admitted to practice law in the Courts of Virginia in 1859. He was elected the first prosecuting attorney for Monongalia county in 1862, after the creation of the State of West Virginia. Was re-elected in 1863, and again in 1870.

In January, 1864, the Supreme Court of Appeals of West Virginia appointed him Reporter of Decisions of that Court, which position he held until March, 1873. During this period he published the first five volumes of the West Virginia Reports, which bear his name. The first volume contains from his pen an accurate and well written account of the formation of the State of West Virginia, and the great events leading thereto, and also the admission of the State into the Union. Three times he was elected Mayor of Morgantown, in 1866, 1867 and again in 1869. So deep was his interest in the State, and so well qualified was he to be a leader of the people, that other honors rapidly came to him. In 1868 he was, by the Republican party, nominated a Presidential Elector for the Second Congressional District, was elected and cast his vote for General Grant. In 1871 he was elected by his county a member of the Constitutional Convention of 1872 to form a new Constitution for West Virginia. He was one of the youngest members of that Convention, and one of the twelve Republican members. Hon. Waitman T. Willey was also a member of that Convention; and such was the respect of the large Democratic majority of that Convention for him, that by them he was called the St. Peter of the "twelve;" and from the genial and lovable character of his son-in-law, the subject of this sketch, it would not have been inappropriate to have called him the St. John of the "twelve."

Mr. Hagans was elected a Representative from his District to the 43rd Congress and was a member of the Committee on the District of Columbia.

In 1879 he was elected a member of the House of Delegates of West Virginia, and was active in securing and submitting to

the people an amendment to the Constitution substituting three Commissioners in each county as a police and final tribunal, in lieu of the old County Court, and had the pleasure of seeing the amendment ratified and made part of our State Constitution. He was again by his county elected a member of the House of Delegates in 1887. In 1880 he was sent as a Delegate to the National Republican Convention held in Chicago, and as a member of that Convention was an ardent, untiring and persistent adherent of the "Plumed Knight," James G. Blaine, and did all he could to secure his nomination to the Presidency, and only yielded his preference for his illustrious friend when the Convention so decidedly pronounced in favor of him who was to be the second martyr President, and he advocated before the people his election, with all the activity and energy of his strong nature.

In 1888 he was elected Judge of the Judicial Circuit composed of the counties of Monongalia, Marion and Harrison, for the full term of eight years. And although his health failed during that term so that for much of the time he was unable to hold Court, yet the love and confidence of the people for and in him was such that he was in 1896 nominated and elected Judge for another term of eight years, and served nearly four years of his second term, often being from sickness unable to discharge his judicial duties, and no one desired his resignation. This is a compliment to a disabled officer not always tendered.

In 1860 he married Miss Sarah B. Willey, the daughter of his legal preceptor, the distinguished Senator Willey. He had by this marriage three daughters, two of whom survive him. His wife died about two years before him. His venerable father-in-law died only a few weeks before him, and his daughter Bessie only a few days before. The Judge for many months had a hand to hand fight with the grim monster, but he was not afraid of him. A few days before his death, suffering the keenest physical anguish, and greatly desiring relief from suffering, he addressed death in an audible voice, "Strike, I do not fear you, I am ready." It was said by his closest friends several days before his death, "he is dying," but still he did not die. He lingered until the 17th day of June, 1900, when he yielded to the inevitable. But

"He went not like the quarry slave at night
Scourged to his dungeon, but sustained and soothed
By an unfaltering trust, he approached his grave
Like one who wraps the drapery of his couch
about him, and lies down to pleasant dreams."

He had no fear of death. He died on an illustrious anniversary, and it was fitting that that should be the day of his death. He was a son of Revolutionary ancesters. He was the President of the West Virginia Society of the "Sons of the Revolution," and what more fitting time for him, than on the anniversary of the Battle of Bunker Hill, where the brave Warren sealed his devotion to his countrv with his blood.

Judge Hagans possessed literary ability of a high order, which was evinced by his writings and speeches which were ornate, sound in logic and rich in imagery. He was a pleasing speaker. Last year on Chadwick day in Morgantown we heard a most beautiful speech on our naval victories in the Spanish-American war, which speech was prepared by Judge Hagans while sick, and was forcibly read from the platform by his daughter, Miss Bessie. There was nothing said on that day that equalled in beauty of thought and diction, or had as much in it to warm the blood with patriotic fire, as that speech.

In all the positions in which Judge Hagans was placed, he met the expectations of those he served. He never lagged; was always at the front, with ability to discharge the duties laid upon him. In all his relations in the Church, and in the world, he sustained himself, and discharged his duties well. He was by nature and education well equipped for life's work. His popularity was great because he was always in the line of duty and was what politicians call a good "mixer." He had the elements of popularity in him. No wonder he filled so many public positions. He had keen perceptions and could always separate the false from the true. He was a kind and genial friend; a kind and indulgent husband and father. He was an able and upright Judge. He was conscientious in the discharge of every public duty.

We desire in this memorial to express the appreciation that

the Judge of this Court and the members of the Bar of Monongalia county, have of our friend John Marshall Hagans. We tender our sympathy to the family and relatives of our friend; and especially do we extend our warmest sympathy to the surviving daughters of Judge Hagans in this their sore trial, and commend them to the care of the same Heavenly Father in whom their father believed and trusted.

# JAMES HENRY BROWN.

By Hon. Okey Johnson.

When a prominent man dies, it is right, it is proper, that notice be taken of his life and character; first, because justice to his family and friends requires it; and also because the public good demands it. No man dies without leaving some impression either for good or ill. The circle of his influence may have been narrow, influence, almost unappreciable it may be, but some, which was either good or bad. But when a man has been in the steady gaze of the public for sixty years, has held high stations by the choice of his fellowmen, his life has either been a blessing or a curse. It does not follow that such person's influence was good, because he ruled his fellows, or because he held high positions, apparently because his immense popularity placed him there, but frequently because the man was a great political organizer; knew how to pull the dirty "political ropes," and where to put his own money, or that of other people, "where it would do the most good;" that is, where it would help himself and friends to place and power. Often, however, when one has become prominent, he is a kind-hearted man, unselfish and sympathetic, and because of his unselfishness, and sympathy with the common people, he has great influence, and reaches the highest places. Sometimes, when the friends of such an one wish to see him advanced, they "organize his popularity" and make a good thing out of it both for him and themselves.

Mark Antony was made to say:

"The evil that men do, lives after them,
The good is oft interred with their bones."

But it would be nearer the truth to say,

"The good that men do lives after them,
The evil is oft interred with their bones."

This is well. The world is so generous, that it generally remembers the good men have done and forget the evil, unless the man in question was a Nero, Caligula, Pontius Pilate, Duke of Alva, Jeffries, or a Benedict Arnold. In such cases the evil is so marked that the world cannot forget it. We would like to throw on the canvass a picture of the life and character of Judge Jas. H. Brown; a picture that not only those who knew him but thousands of others would at once recognize.

There is nothing in that life and character that we would be ashamed to see on canvass.

He was born in Cabell county, Virginia, now West Virginia, on December 25, 1818.

His father, Dr. Benjamin Brown, came from Prince William county, Virginia, to where Huntington now stands, in 1805. Dr. Benjamin Brown's ancestors lived in that county since 1636, in which year the English ancestor, William Brown, came from England. The mother of Jas. H. Brown came from North Carolina. So his ancestors, both paternal and maternal, were Southern people.

When quite a young man the subject of this sketch entered Marietta College, but owing to ill health he left college, and after some time spent in travel he regained his health and entered Augusta College, Kentucky, where he graduated in 1840. On a fly leaf of a copy of the life of Bishop Bascom, found in his library, Mr. Brown pays this tribute to Bishop Bascom and other instructors in Augusta College: "In 1839-40 I was at Augusta College, graduating in the fall of 1840; was in the class of Prof. Bascom in all the courses taught by him. Also in the classes of President Tomlinson, Profs. Trinkle and McConn, for all of whom I had the highest regard and respect; for Prof. Bascom and President Tomlinson especially, amounting to admiration."

He read law with John Laidley of Cabell county, and was admitted to the bar in 1842, and practiced on the circuit, in Cabell, Wayne, Logan, Mason, Jackson and Kanawha counties, and in the Federal and Appellate Courts.

In 1848 he removed to Kanawha county and ever after made that his home. Here he entered one of the strongest bars in the State of Virginia; at that time that bar was led by Col.

B. H. Smith and the "silver tongued orator of Virginia" Geo. W Summers. At that time the land titles of Western Virginia were in an unsettled condition, and many famous ejectment suits were the result; and many of the lawyers became noted "Land Lawyers" and were masters of the many intricate statutes of Virginia, relating to the land titles of the State; among those noted lawyers was James H. Brown. The records of the courts in many of the counties of the State will show that James H. Brown was counsel for plaintiff or defendant in numerous suits for the recovery of the title to much of the wild lands lying in those counties; and the decisions of the Court of Appeals of Virginia will show that he then engaged in the final contests in many of those cases. He found at the Kanawha bar foemen worthy of the "steel" of any "fighter" at the bar; and that he there won cases and honors at the bar, shows that he was made of superior "stuff."

From 1848 to 1852 he was in partnership in the practice of law with the late J. M. Laidley, esq., and afterwards with W. S. Summers, which partnership was broken up by the war, Mr. Summers casting his fortunes with the South.

Shortly after his admission to the bar, Mr. Brown entered the political field, taking an active interest in public affairs. He was an old time Democrat and believed in the traditions of his party. In the famous campaign of 1844, he shouted as earnestly as any one the battle cry of that notable campaign, when "Harry of the West" went again to defeat "Polk, Dallas and annexation." And as a result of that great campaign the United States received one of its richest acquisitions, equaled only by the "Louisiana Purchase." Only twenty-six years old, yet he was an earnest supporter of the annexation of Texas, and was willing to take the consequences. Ten years later, in 1854, he was a delegate from Kanawha county to the Virginia State Convention which met at White Sulphur Springs to consider the subject of internal improvements. He was chosen one of the Vice Presidents of that convention, and earnestly advocated the early completion of the Covington and Ohio Railroad, now that magnificent highway, "The Chesapeake and Ohio Railway."

In the Winter of 1854-5 he was a delegate to the Democratic State Convention at Staunton, which nominated Henry A. Wise

for Governor of Virginia, the man who in the campaign that followed, in his terrible and merciless expose of Know-Nothingism, gave that oath bound political organization its death wounds. In 1855, in that same campaign, he was the Democratic candidate for Senator from the Kanawha District. His opponent was the Know-Nothing candidate, and while he fought Know-Nothingism with great power and heroism, yet he was defeated.

In the Winter of 1856 he was a delegate to the Congressional Convention at Parkersburg that nominated A. G. Jenkins for Congress.

In the Spring of 1861 he was a delegate to the convention at Parkersburg that nominated Jno. S. Carlisle for Congress.

Then the war came on and our hero came to the "parting of the ways." Political organizations were to be broken up. While Mr. Brown was an ardent Democrat by inheritance and conviction, and was a strong States rights man, yet he never believed in secession; and but few Democrats were original secessionists. While a great many Democrats went with the South, so did many who had been Whigs. At that time the Republican party had no strength in Virginia, or in any of the Southern States. The people now became divided into Union men and secessionists. The Democrats held to their organization, however, but in Western Virginia they were for the most part Union men. In 1860, in the terrible contest of that year the Democrats were divided, a part supported Breckinridge and a part supported Douglas. Mr. Brown being a strong Democrat, and Breckenridge being the regular nominee, he, as did Ben Butler in that campaign, supported Breckenridge The old Whigs supported Bell and Everett, whose platform was "the Union, the Constitution and the enforcement of the laws."

Mr. Lincoln received but few votes in Virginia. When the campaign was over, and Mr. Lincoln was elected, and South Carolina seceded, followed in quick succession by other States, a situation was presented that "tried men's souls." The question, momentous and grave, was presented, "Will you go with your State out of the Union, or will you fight your own flesh and blood, and for the Union?"

A member of the Virginia Convention of 1860 described to the writer the scene on the floor of that Convention the night the ordinance of secession passed. It was such as as to bring tears of pity from any lover of his country. The large majority of that Convention was opposed to secession. Jubal A. Early, a strong Union man, had defended the brave General Anderson for his defense of Fort Sumter, had declared General Anderson had done no more than his duty. But as the days passed and the war cloud became more dense, President Lincoln saw that if the Union was to be preserved something heroic must be done. He called for *three hundred thousand* troops to resist the breaking up of the Government, and to see that the laws were executed. He assigned to Virginia her quota of troops to be raised. The Convention saw the war had begun and the dire alternative was presented, "Choose between Virginia and the Union?" And they chose Virginia, and passed the ordinance, that as far as they had the power, broke the bond that held Virginia to the Union. And when they did this, on that terrible night, strong men, unused to tears, bowed their heads and wept like children. No doubt some of them had a vision something like that that came to the man of sorrows when he wept over the doomed city he loved. O if they could have seen the terrible war scars that would have be left on Virginia's fair bosom, they might have voted differently. Gen. Lee and Stonewall Jackson went through this same bitter sorrow. Think you it cost James H. Brown nothing, strong man of forty-three as he was, to give up his old party ties, old friends and old associates? Of course the cup was bitter, but he drank it. His convictions of the right, and his duty were deep and strong. He had the courage of his convictions, and he shrank not from his duty as he saw it. He was one of the very first men in Western Virginia to make a bold and vigorous stand for the Union. The ordinance of secession, had by the Convention been submitted for ratification or rejection, to be voted on in May, 1861. Mr. Brown made a vigorous stand in the campaign against ratification. He made many speeches and was bold and defiant. He warned the people of the consequences of ratification. Of course the ordinance was ratified. But it could not change the loyalty of the people of West-

ern Virginia. The people on this side the mountain were determined they would not be driven into the Southern Confederacy.

A convention was called of the people of West Virginia, to meet in Wheeling the latter part of May, 1861. The convention met. The government of Virginia was restored, with its capital at Wheeling, with its Governor and all the State officers. This restored Government of Virginia was recognized by the civil and military authorities of the United States. Mr. Brown was a member of that convention, with Col. B. H. Smith, F. H. Pierpont, Waitman T. Willey, D. D. Johnson and many others. Mr. Brown was also a member of the Virginia Legislature that met at Wheeling in the Winter of 1861. When a new State is to be carved out of another State, the Constitution of the United States declares, Art. IV., Sec. 3, Clause 2, "But no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislature of the States concerned, as well as of Congress."

A Constitutional Convention was called for the purpose of forming a new State. Mr. Brown was a member of this Convention, and helped to form the Constitution of the new State. It required the consent of Virginia, the new State and of Congress before the new State could be admitted. Virginia, by the Legislature of her restored government, gave her consent, and when the people of the new State ratified the Constitution, their consent was had. Congress refused to accept this Constitution, until an amendment abolishing slavery in the new State should be adopted. In all the bodies politic that had anything to do with the new State, and the preservation of the old State, Mr. Brown was a bold, courageous and powerful factor. No man, to accomplish these objects, did more than Mr. Brown, and the writer thinks no one did as much. He had done his work faithfully and well at Wheeling, and added to all this another duty was now thrust upon him. He was elected Judge of the Eighteenth Judicial Circuit of Virginia, to succeed that able jurist, David McComas, who had abandoned his office and had gone South.

On the 14th of January, 1862, he resigned his seat in the

Legislature, to take effect on the 24th of that month. On the 18th of February, 1862, Judge Brown resigned his seat in the Constitutional Convention, and the next day qualified as Judge of the Eighteenth Circuit, composed of the counties of Putnam, Cabell, Wayne, Mason, Jackson, Roane and Kanawha. His experience as Judge was a very trying one. Much more so than his arduous duties at Wheeling, in the Convention Legislature and Constitutional Convention, surrounded and protected as he was by the military forces.

In his new field he encountered many dangers. While holding court in Point Pleasant, Mason county, the Confederate cavalry came upon him, and to escape capture he was compelled to flee across the Ohio River under heavy fire. More than once he had to evade the enemy by flight. But he shrank not from the discharge of his duty, and while he was Judge of the Circuit he missed no term of the court. On the 5th day of February, 1863, he was elected a member of the Constitutional Convention to fill the vacancy caused by his own resignation. The Convention had submitted to Congress a Constitution which Congress refused to accept until an amendment should be adopted abolishing slavery in the new State. The Convention reassembled to consider that amendment. Judge Brown disapproved the action of Congress. He did not think Congress ought to require the emancipation clause as a *condition precedent* to the admission of the new State. But there was no other way than to yield. The people of Western Virginia had long smarted under the acts of injustice in the matter of taxation by the Virginia Legislature, which imposed a system of taxation which was unequal and unjust. Their young slaves were exempt from taxation, while all the property of the people of the western part of the State was taxed. Again there was great injustice in the system of internal improvements. The people of the east having a majority, would improve their section, to the neglect of the people of the west. Our people complained bitterly at their treatment and said, they were "hewers of wood and carriers of water" for the people of the east.

These wrongs were known and felt by all our people, and by none more than Judge Brown. In many of his impassioned

speeches, he warned the people, that "secession executed, would result in a division of the State of Virginia as certainly as the dripping clouds on the crest of the Alleghanies parted their waters to the east and west." He was one of the earliest advocates of the new State of "Kanawha," afterwards changed to "West Virginia," Now, after all his struggles, and the struggles of his compatriots, he thought it hard that Congress should throw this new obstacle in the way of those who had made such sacrifices for the Union. But there was nothing to do but yield, which they wisely did. The amendment was adopted and ratified by the people at the polls, and West Virginia was admitted into the Union as one of the Sovereign States. Judge Brown was one of the great men in West Virginia that accomplished this great and glorious result. West Virginia had now been recognized by the two political departments of the government. That was sufficient; but afterwards, in the great suit brought by Virginia vs. West Virginia in the Supreme Court of the United States to reclaim jurisdiction over the counties of Berkeley and Jefferson, 11 Wall 39, the court reviewed the situation, and held that West Virginia had lawful jurisdiction over those two counties, and over all its territory. So it is absurd now for any one to question the legitimacy of West Virginia. The State is the fair, the beautiful, strong and accomplished daughter of Virginia, with no shade of suspicion as to her legitimacy. Judge Brown might well have been proud of the great success which crowned his arduous labors, with others, to see West Virginia one of the States of the Union.

The new State of course had its judiciary. As was proper and right, Judge Brown was one of the first Judges of the Supreme Court of Appeals of West Virginia. He was elected on the 28th day of May, 1863, and held his office for eight years, until the term expired. He was then renominated for the office but was defeated with the ticket. Again in 1876 he was nominated by his party, but was again defeated with his party.

In 1875 he was the caucus nominee of his party for United States Senator. His party being in the minority, he was not elected.

In 1880, and again in 1886, he was by his party nominated

for Congress, but was each time defeated with all others on his ticket.

As a Judge of the Supreme Court of appeals he had to decide many intricate questions and many important cases. He was always firm, conscientious, forcible and able in his decisions. He had been well prepared for the position by general culture and hard legal study. It can be said with emphasis of his judicial career, that he was an able, upright and conscientious Judge.

After his retirement from the bench, he resumed his law practice in partnership with his son, Hon. J. F. Brown. This son never got away from his early training, and was therefore a Democrat. In 1882 the Judge was nominated by the Republican party as a candidate for the House of Delegates from Kanawha county, on a ticket with two others, the county being entitled to three delegates. His son, Jas. F. Brown, was, with two others, nominated by the Democrats for the same position. J. F. Brown and J. M. Collins, another Democrat, and Judge J. H. Brown, Republican, were elected; thus they met in the political arena on opposite sides. In that House of Delegates Judge J. H. Brown was the acknowledged leader on the Republican side.

While he was Circuit Judge no appeal or writ of error was taken to any of his decisions. In the Constitutional Convention that formed the new State Constitution, he was chairman of the Judiciary Committee, and had more to do than any other member of the Convention in shaping those great provisions in the Constitution, so necessary to the protection of the lives, liberty and property of the citizen.

In 1881 he was a delegate from the West Virginia State Sunday School Convention to the International Sunday School Convention at Toronto, Canada.

In 1883 he was a commissioner from the Presbytery of West Virginia to the Presbyterian General Assembly at Saratoga.

In 1888 he was a delegate from the West Virginia State Bar Association to the National Convention at Washington,

D. C., that formed the National Bar Association, and was chairman of his State delegation.

In July, 1888, he attended the National Educational Association at San Francisco.

In 1891 he was a delegate to the National Mining Congress held at Denver, Colorado, and was a member of the Executive Committee.

Although he retired from the active practice of the law in 1885, his interest in public affairs in no wise abated. He devoted himself to literary pursuits, reading and travel, and up to the time of his death kept abreast of the times with the best. He was an earnest member of the West Virginia Bar Association from its first meeting in Charleston, and took great interest in its proceedings.

He retained his physical vigor up to his last brief illness; and his mental vigor unimpaired, until the grim reaper stood in his presence, when he obeyed the summons at the ripe age of nearly eighty-two.

He was twice married, first to Louisa M. Beuhring, daughter of Hon. F. G. L. Beuhring, of Cabell county. She died in 1872. In 1879 Judge Brown married Sallie G. Lovell, widow of Fayette A. Lovell, and daughter of W. D. Shrewsbury, Esq., who survives him.

He left surviving him six children, Hon. Jas. F. Brown, of Charleston; Benjamin Brown, of Denver; Mrs. J. F. Bickman, of Denver; Mrs. W. S. Laidley, Mrs. T. L. Barber, and Miss Nellie Brown, all of Charleston. He was a man of strong constitution; during his long life seldom ill, but took a violent cold, which developed into pneumonia, and on Sunday, October 28th, surrounded by his wife and children, he "crossed the bar" and met his "pilot face to face."

Judge Brown was a deeply religious man. He was a Presbyterian and believed the tenets of his church; but his was a broad Christianity and embraced all who followed "the Master" of whatever name they might be.

He was a domestic man; a lover of home and home joys. The man is best known in his home. It is there where his real character shows itself. There was about his home life a

simplicity and dignity, a tender consideration for all, even the smallest, a gentleness and at the same time a sense of authority, which, while commanding reverence, never repelled, but drew all to him, with a closeness and affection seldom equalled in any home. No grandchild of his was too small, nor its pleasures or sorrows too insignificant to interest him, or receive an attention that won its love. The frost of age showed only in his whitened locks, never in his heart. His last employment was in assisting the little ones in laying off and preparing a "tennis court," in which he worked as hard and took as much interest as the least of them.

He was eminently just in his home, leaving that impress on all, but with it combined in rare degree, those qualities that drew his dear ones very near to him indeed. While those of his home *honored* his life and character in those aspects with which the world was acquainted, they *loved* the side that showed itself at home.

He was a man who calmly formed his opinions, and then dared ever to maintain them. He never counted the cost when he conceived there was a principle involved. None ever knew a more striking instance of unswerving moral courage. He was never known by his most intimate friends to shirk or flinch, when put to the test. Policy, interest or influence counted for naught, in determining his views, or shaping his actions. And yet, with all this he had ever for his opponent a courteous consideration, that stamped him among the first of the gentlemen of the old school.

While always of strong convictions openly expressed, he was broad and liberal in his views, political and religious, and in all matters affecting the public, or private interest, generous and liberal, but always in an unostentatious way, mindful of the injunction, not to let the left hand know what the right was doing; careless of popular approval or praise, ever unobtrusive, save when he thought that duty called for speech or action, few fully know, or appreciated his standard, or how well he maintained it.

He was a scholarly man, a great reader and student, and did not confine his reading and study to his profession. His

inclination and training led him into the wide fields of history, literature and the classics, and with all this he kept in constant touch, and abreast with current events. His broad knowledge, always up to date, superadded to his genial, unassuming manner, made him an ever charming companion for his friends, and those admitted to the inner circle.

His nature was intensely loyal. Whether to friends, or to his country, his State, his county, her services and his best were ever to command.

He loved West Virginia, born on her soil yet present, and assisting at her birth, in the throes of mortal agony 'mid which she was brought forth.

He loved the county of his adoption, and sought, at first with success, to christen the new State "Kanawha," in its honor.

He was foremost in all efforts to develop her resources, and advance her interests.

He loved his town, and left no stone unturned to make it what it is; and in the Constitutional Convention, which formed the State, inaugurated the movement that ultimately gave to it the capital of the State.

Such was Judge James H. Brown. Such is a picture of his life and character. In all his relations he has shown sterling worth, and has left to the young men of the State an example worthy of their study and emulation.

# ROBERT M'ELDOWNEY.

By Frank Wells Clark.

Robert McEldowney was born near New Martinsville, West Virginia, November 6th, 1837, and died in his native town on the 27th day of August, 1900. His boyhood days were passed in working upon the home farm, and in attending the subscription schools of those days. He prepared for college at the Moundsville Academy, and was in the midst of his course at Marietta College at the beginning of the Civil War. In my county traditions of those early days have been handed down, and one oft hears of the jolly good times in which young Bob McEldowney was a prominent figure; his unfailing good humor and overflowing vitality making him a leader then as always.

Knowing with what eager interest and attention he has to the end watched every changing phase of the political kaleidoscope, we can imagine how the boy, already in everything giving promise of the coming man, followed the stirring events out of which grew the War of the Rebellion—those days when Douglas and Lincoln and Greeley and Breckenridge and Seward and other Titans filled the public eye. When the Mother of Presidents decided to follow her sister States of the South, Robert McEldowney left his books and went to the front with the Shriver Grays, a company organized in the northwestern counties of Western Virginia, which subsequently became Company G of the 27th Virginia Infantry Regiment, and a part of the immortal Stonewall Brigade.

Private McEldowney received his first promotion only a few months after enlistment, and was commissioned First Lieutenant early in 1862, receiving his commission as Captain in 1863, when twenty-six years of age. Though he served in this capacity during the remainder of the war, yet he has not inappropriately been called Colonel, inasmuch as he frequently com-

manded his regiment on the field of battle during the last two years of the war.

He fought through the war, and no man saw more arduous service. He was with Jackson in the Bath-Romney expedition. He and his company were part of the famous foot cavalry of the Valley campaign, and were with the man of mystery and action at Kearnstown, McDowell, Front Royal, Winchester, and Port Republic. Of the little company of West Virginians a letter written on the field after the opening battle of this extraordinary campaign says: "The Shriver Grays, a gallant handful of exiles from Wheeling, only thirty strong, were thrown out as skirmishers to feel the enemy, and it took three regiments of Yankees to drive them back."

Afterwards he was before Richmond, in the army opposing McClellan, at Gaines' Mill, White Oak Swamp, and Malvern Hill. He was at Cedar Mountain, and was severely wounded at the battle of Second Manassas. Wounded as he was, he led his company at Chantilly, but was for a time thereafter entirely disabled; rejoining his command in time to participate in the battle of Sharpsburg. He fought under Jackson at Fredericksburg, and was on the field of Chancellorsville, where the right arm of the Confederacy was laid low by the bullets of his own men. Under Ewell he was at Winchester, and took part in the invasion of the Keystone State. On the bloody field of Gettysburg, where was decided the issue of the four years' contest, he was again wounded; but was again in active service the fall of 1863 at Mine Run. In 1864 he was in the army operating against Grant, being again slightly wounded in the battle of the Wilderness. After participating in the struggles at Spottsylvania Court House and Bethesda Church, he returned to the Valley, under Terry, and assisted in driving the Union forces from Lynchburg, and was a member of the Early expedition against Washington, which caused so much excitement at the National Capital.

Again at Winchester, at Fisher's Hill, at Cedar Creek, and at Hatcher's Run he was with his regiment, and was one of the band of heroes who attempted the capture of Fort Steadman, on March 25th, 1865. Here he was wounded in the leg, and

was incapacitated for duty during the remaining days of the struggle.

In June, 1865, he was paroled, and returned from the hospital at Richmond to his home on the banks of the Ohio. He must have been an ideal soldier, and we know that he returned to his home a strong, robust man, unharmed by the temptations of army life, to which so many brilliant young men succumbed.

His next training was a business one. For three years he was in Philadelphia, employed as book-keeper by a prominent wholesale house. Returning to West Virginia, he officiated as ticket agent of the Baltimore and Ohio Railroad Company, at Wheeling, until 1872, when he again located in New Martinsville, there to reside until his death. For a time he was employed by his brother, John C. McEldowney, who was then Clerk of both the Circuit and County Courts of Wetzel county, leaving this work in a short time to take up the practice of his chosen profession—the law.

In 1874 he represented his county in the State Legislature. About 1879 he became the editor of the *Wetzel Democrat.* In 1884 he was married to Miss Anna L. Smith, of Pittsburg, Pa., his wife and Geraldine, their only child, surviving him.

He was a brave soldier to the last, for, surely, never did the King of Terrors vanquish a more heroic soul. With his tongue partly gone, unable to talk without great pain, able to take only liquid food—his indomitable spirit was yet unconquered; and every week, all over the Commonwealth, men and women read his paragraphs and verses—read and wondered—read with tears in their eyes and a sharp pain piercing their hearts. All this, perhaps, comes home more to me than to some of you, for ever before me is a vivid picture of the circumstances under which those lines were penned. How vivid, too, is the picture of those evenings when he received his friends, sitting in his arm-chair, holding pencilled conversations with them; and of those nights of agony when he uncomplainingly struggled with the demon of pain during the long night watches, and the grateful pressure of the hand when morning came. Even during all this, as some one has well said, his writings were eloquent and cheerful—never more so.

Robert McEldowney was a many-sided man; one of the most remarkable of West Virginians. This extended to his personal appearance, as he was of commanding stature and magnificent carriage—the observed of all observers wherever he went.

He was a man of wide information. He had read much. He had traveled extensively over our own country and was ever a keen student of human nature. He was a master both of pathos and humor. He was, at his best, an orator. He was, however, a purely extemporaneous speaker, and all things had to be propitious in order that he should do himself full justice. During his young days he was the beau ideal of the ladies, and in society he was always in demand.

He was popular with the masses of the people, and might have achieved high political honors. It is the opinion of many politicians that he could easily have secured the Democratic nomination for Congressman in his district at any time during the last fifteen years; but when approached on the subject he invariably discouraged the idea.

As an attorney he had a most active practice, covering all branches of the law. He was well grounded in the fundamental principles of the law. Though cautious in counsel, he was pugnacious in fighting his cases when once his bearings had been taken. He did not love the grind and drudgery which are the cost of scaling to the heights of the legal profession; but he was faithful to his clients, and under the pressure of emergency, during the trial of cases, his work was at times brilliant.

He would, undoubtedly, have attained higher success in the law, had he not carried along with it the labor of another equally exacting profession. For twenty years he edited the *Wetzel Democrat,* and his brilliant, incisive, witty paragraphs made his name a household word throughout the State. It is not too much to say that he was the pride of the newspaper fraternity of West Virginia. Had he removed to a city his paragraphs would almost certainly have attracted national attention.

Permit me in conclusion to quote two poems of Col. McEldowney's which, I believe, have never been published. The first, entitled "The Soldier's Rest," was written in 1864:

"A soldier's rest! 'Tis a fancied thing;
'Tis a dreamful sleep on a fitful wing;
A butterfly's touch on a faded flower;
A moment of sighs in a weary hour;
A rainbow in the morning sky,
Which fades to tell of the storm that's nigh.
A soldier's rest! 'Tis a rest unknown,
From the torrid clime to the frigid zone.

"A soldier's rest! When the strife is done,
When the battle's lost and the victory's won,
His face upturned to the starless sky,
And the light gone out from his staring eye,
Look on that brow—late worn by care:
No passion's soul is imaged there;
For ah! in death there's naught to prove
Of hope or hate, or fear or love.

"A sod no mourner's foot hath prest
In a silent wood is the soldier's rest:
A rest through the long and lonely years,
In a spot unblest by a mother's tears;
No sculptured stone there marks his bed,
No sister's rose blooms o'er his head.
He sleeps alone! alone is blest,
'Tis Heaven's to mark the soldier's rest."

The following beautiful lines were written in 1860:

"For thy love all day I'm sighing
Like a child;
For some hidden treasure sighing;
Far and wild
Doth my wandering spirit rove.
But to love
Only thee
All my soul in thus agreeing,
Thou'rt the most delightful being
That the blessed sense of seeing
Gives to me.

"When the shades of night are round me,
Dearest love!
When the spell of sleep hath bound me,
Like a dove!
Doth my winged spirit fly
To the sky,
Dearest love!
Where my soul's ideal dwells,
Where the heavenly music swells,
And where love's pure fountain wells,
Far above!

"There on angel wings to meet me
With a kiss!
Thou dost come and fondly greet me,
Oh, what bliss!
Doth my raptured spirit feel,
As I kneel
At thy feet.
Round me holy lights are gleaming,
In this blest celestial seeming,
Thus, if life were spent in dreaming,
It were sweet!"

## JOSEPH ROGERS PAULL.

Joseph Rogers Paull, one of the Judges of the First Judicial Circuit, died in the city of Wheeling on the 16th day of September, 1899, sincerely mourned by the bar and the public as well as by his family and friends.

Judge Paull was born in Fayette county, Pennsylvania, December 9th, 1848, his parents being Joseph and Eliza Paull. His education was obtained at a preparatory school in Canonsburg, Pennsylvania, and at Washington & Jefferson College and LaFayette College. His professional studies were carried on at Columbia Law School in the city of New York. He began the practice of his profession in the city of Wheeling and there carried it on until his election to the bench. In that city he married Miss Lillie Heiskell October 24th, 1888, and he left her surviving him.

While the judges who have been elected from time to time in the First Circuit have usually been named by the political party then in the majority, the instances are rare in which the political views of the judge have been the controlling consideration in choosing him. Generally speaking, the judge, while nominated by a political party, has been selected within its lines because of his merit and fitness for the position.

This was particularly true in the case of Judge Paull. His hold upon his party, as upon the bar and the community, was because of the man's solid qualities. While always adhering upon principle to the Republican party, he did not take an active part in political counsels or labors. He was a man of quiet tastes and retiring manners, and his practice at the bar was not of the sort to attract public attention. The contests of the court-room had no attraction for him. He preferred that kind of practice which called for quiet and temperate investigation of the principles and precedents of the law.

For a long time before he went upon the bench he was a Commissioner in Chancery of the Ohio County Circuit Court, and the counsel in any important and intricate case took pains to see that it was referred to Mr. Paull. The diligent, faithful and painstaking way in which he examined every case, the infinite care with which he unraveled and followed out its every thread, the fairness of his conclusions, and the clearness with which they were stated in his report, marked him as a man of integrity and ability and of all those things that go to make up the true judicial temperament.

When in 1888 judges were to be elected for the First Judicial Circuit, the bar of all its counties and all the delegates in the convention of his party rejoiced in the opportunity to serve themselves and the State by naming Mr. Paull as a candidate for one of the places on that bench, and their judgment was confirmed by a large popular majority.

If there was any doubt as to the propriety of that selection it was only because Judge Paull's distaste for the excitement and turmoil of jury trials had left him with but little experience in that branch of practice. After he went on the bench, however, any such doubt immediately disappeared, for Judge Paull showed himself fully capable of presiding at the trial of causes to a jury. In that, as well as the other duties of the position, he was learned, impartial, ready, courteous, considerate and firm, actuated by the sole purpose to do the right, and equipped by nature and training with the necessary mental faculties to work out that purpose. It followed that he showed himself to the public to be the judge which his fellow-members of the bar always believed he would make.

In 1896 the unanimous re-nomination of Judge Paull for the same position and the flattering vote by which he was elected demonstrated his strong hold upon the legal profession, his political party and the whole community.

Judge Paull's sense of duty, public and private, was so strong that it impelled him to continue in the labors of his high office long after the inroads of disease were such as would have afforded a less conscientious man good reason to spare himself. During the concluding months of his life, although weakened

in body, his mental vigor was unimpaired, and he was unremitting in the discharge of his offical duties. He was long a member of the Presbyterian Church, and his Christian character was always manifest in his daily life.